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Client Alert Commentary

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The UAE Introduces the First SPAC Framework in the GCC

The SPAC Framework, which became effective on 4 January 2022, allows for the formation and listing of SPACs in the UAE for the first time.

Special purpose acquisition companies (SPACs) have emerged as an important means of capital raising and have become increasingly popular amongst private equity sponsors, global investors, and target businesses as an alternative to traditional initial public offerings (IPOs) when taking a business public.

A SPAC is a freshly incorporated publicly listed company with the sole purpose of acquiring a target business using the bulk of the proceeds of its IPO. A SPAC has no meaningful assets or business, but rather raises capital through an IPO on the basis of its management's track record. SPAC management teams typically target an industry or sector but not a particular company prior to completing an IPO. Once a SPAC goes public, it has a set timeframe in which to use the funds it has raised to acquire a target through a business combination (a De-SPAC Transaction), failing which the funds will be returned to the SPAC's investors. A SPAC is set up by sponsors and founders, which may consist of one or more individuals, private equity entities, or other experienced investors (the Sponsors).

Given the initial popularity of SPACs in the United States, many other jurisdictions around the world have followed suit by introducing SPAC-specific regulations, opening consultations to do so or otherwise clarifying how SPACs specifically can be formed under existing rules, including the European Union, Hong Kong, Singapore, and the United Kingdom.

Following this global trend, UAE Federal Law By Decree No. 32 of 2021 (the Commercial Companies Law) formally recognised SPACs under UAE law for the first time, carving out SPACs from the majority of the rules of the Commercial Companies Law and paving the way for the creation of specific regulations to govern SPACs. Now, the UAE's Securities and Commodities Authority (the SCA) has issued SCA Chairman of the Board Resolution No. 1 of 2022 on the Regulations for Special Purpose Acquisition Companies (the SPAC Regulations). The SPAC Regulations allow SPACs to be listed on regulated securities markets in the UAE, with the Abu Dhabi Securities Exchange (the ADX) being the first UAE exchange to publish specific rules for the listing of SPACs (such ADX listing rules, together with the SPAC Regulations, the SPAC Framework).

The SPAC Framework will provide an alternative route for taking local companies public and attracting foreign investment. Previously, a Middle East-based target of a De-SPAC Transaction, such as certain regional technology companies, would typically be acquired by a SPAC listed in the United States.

Similarly, SPACs set up or invested in by large Middle East-based institutions, such as certain regional sovereign wealth funds, would be incorporated in the United States. The SPAC Framework now allows a SPAC to be set up and listed in the same region as potential Middle East-based targets and/or Sponsors, potentially leading to cost and operational efficiencies.

Overview of SPAC Formation and IPO Requirements

Under the SPAC Framework, the broad admission criteria for a SPAC listing on the ADX includes the following requirements, which are largely similar to the obligations imposed by frameworks in other jurisdictions, in order to protect investors and set minimum standards for Sponsors and SPACs:

1. **Minimum AED100 million market capitalisation:** The SPAC will be subject to a minimum market capitalisation of AED100 million (equivalent to approximately US$27.2 million) at the time of the listing, computed on the basis of the IPO price and post-invitation issued share capital. The target of the De-SPAC Transaction is required to constitute at least 80% of the fair market value of the SPAC's escrowed funds, which is unlikely to be problematic in practice given that the acquisition cost of a target business in a De-SPAC Transaction tends to be significantly higher than the IPO proceeds raised by a SPAC.

2. **Public float requirements:** At IPO, the share capital owned by the Sponsors (including the Sponsor's "promote", consisting of shares and warrants issued to Sponsors only in consideration of the risk taken to establish the SPAC) must be no less than (i) AED100,000 (pre-IPO) and (ii) 3% and no more than 20% of the SPAC's issued share capital (post-IPO). This threshold approach differs from the SPAC regimes in the United Kingdom and the United States, which instead focus on requiring disclosure of the IPO's dilution effects. Sponsors will not be permitted to divest their shareholding until the SPAC has been listed on the ADX. Shares and warrants in the SPAC can be issued to professional and/or retail investors, but it remains to be seen whether shares and warrants will be issued to retail investors in practice.

3. **Proceeds:** Similar to regimes in the United States and the United Kingdom, until the completion of the De-SPAC Transaction, at least 90% of the IPO proceeds must be placed promptly in an escrow or trust account opened with an independent agent licensed and approved by the SCA. These escrowed funds can be invested in interest or non-interest bearing accounts or, in the case of a trust, in liquid assets. Although "liquid assets" is not defined in the SPAC Framework, this suggests that the United States approach is being followed of allowing the proceeds to be invested and not simply held as cash, contrasting to the general approach in Europe. The SPAC is also able to raise additional funds in a private placement, provided it has received approval from both the SCA and a majority of the SPAC's shareholders (not including those shareholders who are Sponsors).

4. **Business Target:** Before listing, the Sponsors of the SPAC must not have announced or disclosed a target for the De-SPAC Transaction to any person other than a Sponsor.

5. **Suitable Sponsors:** The background of the Sponsors is a fundamental factor in a SPAC investor's decision-making process. Accordingly, the SCA places a number of requirements on Sponsors, including around their solvency, moral standing, and professional record, similar to the other SPAC regimes in Asia. Any proposed changes to the Sponsors after the creation of a SPAC will require the SCA's prior consent.

Timeline: SPAC Formation to IPO

(a) ***Application to create a SPAC*****:** The Sponsors will need to submit an application to the SCA using a prescribed form in order for a public joint stock company (either already incorporated or in the process of incorporation in an Emirate) to be designated as a SPAC. This application will need to be accompanied by a profile of each of the Sponsors (including past experience), the business plan and key features of the SPAC. The SCA will then notify the applicant within 10 business days of its designation decision.

(b) ***Establishment of a SPAC*****:** If the SCA approves the re-designation of the company as a SPAC, the Sponsors will then submit an application to the relevant local authority for the company to be issued a SPAC commercial licence. An approved SPAC will be exempt from a number of the requirements of the Commercial Companies Law, including those relating to incorporation procedures, the Sponsors' contribution, public offerings, strategic partner contributions, and merger and acquisition procedures.

(c) ***Pre-IPO approval***:

(i) The Sponsors will then submit an application to the SCA within 30 business days of the issuance date of the SPAC's commercial licence (unless otherwise approved by the SCA), requesting its approval to proceed with an IPO (using a prescribed form signed by the Sponsors). This application must include the commercial licence and articles of the SPAC as well as a draft prospectus that satisfies the requirements of the SPAC Framework (including, but not limited to, detailed information on the shares and warrants, investment highlights and risks, the SPAC's investment policy and strategy, timeline for completion of the De-SPAC Transaction, the prior experience of Sponsors and potential conflicts of interest).

(ii) The SCA will give written notice of its decision to approve the application (including the prospectus) within 10 business days of receipt of the fully completed application. Failure to submit an application in accordance with the requirements prescribed in the SPAC Framework or within the applicable timeframe may result in the liquidation of the SPAC.

(d) ***IPO*****:**

(i) **Prospectus filing:** The SPAC must file the prospectus with the SCA and make copies available to the public at least three business days before the commencement of the subscription period.

(ii) **Public notice:** Within one business day of filing the prospectus with the SCA and at least three business days prior to the commencement of the subscription period, an invitation to subscribe for the IPO will need to be published in two local newspapers, including one Arabic-language newspaper.

(iii) **Subscription period:** Investors must be given between five and 30 business days to subscribe for shares and warrants in the SPAC (unless an extension is granted by the SCA). Subscription of shares and warrants must be made through the SCA's prescribed form and then allocated within five business days of the end of the subscription period and in accordance with the terms of the prospectus.

(iv) **Proceeds**: At least 90% of the proceeds of the IPO must be credited to the escrow account within two business days of receipt.

(v) **Issuance registration certificate:** Following the completion of the subscription period and the allocation of shares and warrants, the directors of the SPAC must apply to the SCA for an issuance registration certificate using the prescribed form and by paying the applicable fee (the Issuance Registration Certificate). Such application must be accompanied by, among other things, audited subscription accounts including the subscriptions by the Sponsors and evidence that the proceeds have been deposited into an account.

(e) ***Listing***: Within three business days of the issuance of the Issuance Registration Certificate, the SPAC must apply to the ADX for the SPAC's shares and warrants to be listed on the ADX. Shares and warrants are listed separately, in line with the flexibility provided by the regimes in Europe and the United States.

De-SPAC Transaction Requirements

(a) In line with the regimes in other jurisdictions, such as the United Kingdom, the De-SPAC Transaction must be completed within the earlier of (i) the time limit proposed in the prospectus and (ii) 24 months of the IPO, except that an extension of this time period (up to a maximum total period of 36 months from the date of the IPO) is possible if both SCA approval and SPAC majority shareholders' approval (in the SCA prescribed form) are obtained. The target of the De-SPAC Transaction may be located onshore or offshore.

(b) The ADX must be notified of any proposed De-SPAC Transaction and provided with certain information, such as a description of the business, the main conditions to the transaction (including the valuation of the target business and the consideration for the purchase), the timeframe for negotiating the transaction, and any other relevant information held by the Sponsors.

(c) The target for the De-SPAC Transaction must have a fair market value at initial acquisition forming at least 80% of the gross amount held in the escrow account, similar to the De-SPAC Transaction requirements in the US.

(d) Information relating to the De-SPAC Transaction, including a description of the target business, the valuation of the target, the consideration being paid and any amendments to the SPAC's share capital that will be needed to effect the transaction, will need to be sent to, and approved by, (i) the SCA (using a prescribed form) and (ii) shareholders representing 75% of the SPAC's shares at a general meeting of the SPAC. The directors must provide the shareholders with a shareholders circular and notify the shareholders at least 15 business days prior to the proposed De-SPAC Transaction completion date.

(e) In line with international standards, independent shareholders have the right to redeem their SPAC shares at the time (i) where the general assembly of the SPAC has determined to extend the time period within which the SPAC may complete a De-SPAC

Transaction (if that particular shareholder had voted against such extension) and (ii) of the De-SPAC Transaction.

(f) If a De-SPAC Transaction is not completed prior to the expiry of the relevant time period, the SPAC must:

(i) notify the SCA in writing – at which time, the SCA will cancel the SPAC's listing;

(ii) distribute from its account funds to investors pro rata within 10 business days; and

(iii) appoint one or more liquidators to liquidate the SPAC.

(g) Once a De-SPAC Transaction has concluded, the combined entity will no longer benefit from the rules under the SPAC Framework and will instead be subject to the provisions of the Commercial Companies Law and other listing rules that apply to public joint stock companies that are not SPACs.

Latham will continue to provide updates on developments in this space. For more information about the firm's SPACs capability, see https://www.lw.com/practices/spac.

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