

# Welcoming an offshore SPAC wave in Asia



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Last year saw an explosion of special purpose acquisition companies (SPACs) in the US, largely driven by favourable economic returns to SPAC IPO sponsors, liquidity, and pricing certainty offered by SPACs to target companies and investors. The extended low interest rate environment and the speed to market that SPACs offer compared to traditional IPOs has also played a significant role.

Although an initial drop in SPAC activity characterised the second quarter of 2021 – due to the US Securities and Exchange Commission’s concerns regarding forward looking statements and the accounting treatment of warrants – 2021 looks set to be another record breaking year for SPACs, with about USD110 billion raised in capital as at 15 April, according to a report from financial data provider Pitchbook titled *SPAC Market Update: Q2 2021*.

Most SPAC IPOs have so far been arranged by US managers and take place on the Nasdaq or the NYSE. However, the tides are arguably turning as Asian players are looking to enter this space. This article examines SPAC IPOs from an Asian perspective, and the role that the British Virgin Islands (BVI) and Cayman Islands play in their popularisation.

## Future for Asian SPACs

Asian-based sponsors, investors and managers have demonstrated a keen interest in SPAC IPOs on US stock exchanges, particularly in the technology sector. As a result, stock exchanges in Asia, such as in Hong Kong and Singapore, are considering lifting their longstanding prohibitions on raising funds for unspecified purposes.

While Asia’s conservative approach to SPACs is unlikely to match the level of deal flow or capital raising seen in the US in the short or medium term, the region’s financial markets are reliant on a steady stream of IPOs to remain competitive. Therefore, Asia’s key financial centres are expected to develop a suitable regulatory framework. A number of SPACs are currently exploring de-SPAC opportunities in China and South Asia, where an abundance of private equity-backed companies with promising growth prospects are located.

Considering that SPAC fundraising in Asia may be more limited, it is important to note that there are options to mitigate the liquidity risk associated with shareholder redemptions and fund the post-closing operations of the combined entity. Many SPACs issue new shares to institutional investors in private investment in public equity (PIPE), which closes concurrently with the de-SPAC transaction to raise additional funding. The sponsor

or institutional investors may also enter into purchase arrangements with the SPAC to commit to purchasing new shares of the SPAC concurrently with the closing of the de-SPAC transaction.

## Cayman or BVI?

Most SPACs pursuing US targets continue to be incorporated in Delaware, although the BVI and Cayman Islands also remain popular. The popularity of both offshore jurisdictions is expected to increase as SPAC activity picks up in Asia. BVI and Cayman Islands companies are widely adopted across the region and familiar to stock exchanges, regulators and other relevant market participants.

The Cayman Islands are currently more popular than the BVI, probably because the Cayman Islands continues to be the jurisdiction of choice for listed companies and private equity funds. That being said, BVI companies may confer certain advantages in the context of SPAC transactions. For example, the shareholder approval thresholds in a de-SPAC transaction for a statutory merger are typically lower in the BVI than in the Cayman Islands.

There are various features of BVI and Cayman Islands law that make them attractive for SPACs, including:

- (1) BVI and Cayman Islands companies may have unlimited objects and purposes, which is important for SPACs with broad investment mandates;
- (2) There is significant flexibility in tailoring the articles of association of the relevant SPAC to accommodate the issuance of warrants and different classes of shares, as well as the incorporation of defensive takeover tactics;
- (3) There is no takeover code or legislation that is specifically applicable to listed companies, with the exception of the Cayman Islands Code on Takeovers and Mergers, which is only applicable to companies whose securities are listed on the Cayman Islands Stock Exchange;
- (4) BVI and Cayman Islands companies that are listed on a US stock exchange may be able to qualify as a foreign private issuer, thereby taking advantage of reduced disclosure and reporting requirements; and
- (5) Both jurisdictions have well-established and straightforward statutory merger regimes that are conducive to de-SPAC transactions.

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