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离岸实体结构在中国 SPAC 交易中的作用

The role of offshore in Chinese SPAC transactions

Amid the current wave of publicity surrounding deals involving Special Purpose Acquisition Companies (SPACs) and the explosion in popularity for utilisation of SPACs for equity capital market transactions among institutional and retail investors alike, the Maples Group has continued to see significant demand for Cayman Islands exempted companies to act as the issuer vehicle on SPAC initial public offering (IPO) transactions.

The use of a Cayman Islands exempted company as the issuer in these deals is the standard approach for Chinese and Asia-based SPAC IPO transactions. A Cayman Islands exempted company is incorporated to act as the issuer for the purposes of listing on one of the major US securities exchanges, the New York Stock Exchange (NYSE) or the Nasdaq.

Why are Cayman Islands exempted companies chosen for these transactions? The Cayman Islands exempted company is a vehicle whose characteristics are well understood, both in China, the rest of Asia and in the North American market, among others. There is also increased interest in using offshore vehicles for IPOs on European securities exchanges including Euronext. In Asia, given significant and ongoing global investor interest, the Hong Kong Stock Exchange and Singapore Exchange are engaged in public consultations concerning changes to their listing rule regimes that would permit SPAC issuer listings. Such changes, if they occur, are expected to take effect later this year. At the time of writing, the NYSE and Nasdaq are where the vast bulk of the SPAC IPOs are being launched as Chinese and Asia-based SPAC promoters seek market exposure and access to the immense US investor pool of capital on such exchanges, particularly the institutional and high net worth investor pool.

目前,无论是对于机构投资者还是个人投资者,资本市场中掀起了使用特殊目的收购公司 (SPAC) 进行交易的热潮。在这股以SPAC进行首次公开招股项目的热潮中,Maples 集团注意到,市场对作为发行人实体的开曼群岛豁免公司的需求持续炽热。

在中国和亚洲区的SPAC首次公开招股项目中,使用开曼群岛豁免公司作为发行人实体是标准的做法。注册成立开曼群岛豁免公司,往往作为发行人在纽约证券交易所或纳斯达克等美国主要证券交易所上市。

为什么选用开曼群岛豁免公司来进行这些交易项目? 开曼群岛豁免公司作为实体,无论在中国、亚洲其他国家和地区,还是北美市场,投资者对它的优点已经非常了解。在欧洲的证券交易所,包括欧洲交易所,投资者对使用离岸实体进行首次公开招股的兴趣持续高涨。在亚洲区,SPAC持续备受全球投资者追捧,因此香港交易所和新加坡交易所都有意修订其上市规则制度,允许SPAC发行人上市,目前正处于公众咨询阶段。假如成功修订上市规则制度,预期这些修订后的规则也要在今年晚些时候才能生效。在撰写本篇文章之时,大量SPAC首次公开招股项目正在密锣紧鼓地在纽约证券交易所和纳斯达克进行,因为中国和亚洲区的SPAC发起人,都希望通过这些交易所进入美国市场及美国投资者庞大的资金池,尤其是机构投资者和高资产净值投资者的资金池。

对中国和亚洲区的SPAC发起人来说,开曼群岛实体和英属维尔京群岛实体非常有用,能够为他们提供适当的公司和企业治理架构,

When it comes to China and Asia, Cayman Islands and British Virgin Islands (BVI) structures continue to be a powerful tool providing Chinese and Asia-based SPAC promoters with the right corporate and governance framework that will allow them to attract and maintain investor funding, incentivise management and promote the objectives of key stakeholders. Additionally, the use of a Cayman Islands exempted company provides the right structure for the SPAC to be in a position to consummate a business combination following the IPO, once the SPAC's board has identified a prospective target for the SPAC to acquire/merge with under such business combination (commonly known as the de-SPAC transaction). There is increasing interest in, and consideration of, Chinese and Asia-based operating businesses as acquisition targets for de-SPAC transactions.

The SPAC is set up as a Cayman Islands exempted company and can be established quickly with the incorporation documents returned from the Cayman Islands Registrar of Companies in 24 to 48 hours. The SPAC is incorporated in the same way as any other Cayman Islands exempted company, although with a SPAC-specific memorandum and articles of association (M&A) incorporating certain SPAC provisions, including provisions regulating the SPAC's entry into a prospective business combination (de-SPAC). The M&A will govern the SPAC's operations for its lifespan (generally, two years) until such time as the SPAC identifies and consummates a de-SPAC transaction or, if it does not do so within the prescribed lifespan or if it identifies a de-SPAC deal that is not approved by the requisite majority of investors, then the SPAC will be liquidated and dissolved and the subscription funds

持续吸引投资者、激励管理层,同时推动主要利益相关者的目标得以实现。此外,开曼群岛豁免公司能提供适当的实体结构,使SPAC董事会一旦找到SPAC在相关业务合并下的潜在收购/合并目标后,可在首次公开招股后完成业务合并(这类交易通常被称为de-SPAC交易)。越来越多投资者有意及考虑在de-SPAC交易中收购于中国和亚洲区运营的企业。

SPAC成立为一家开曼群岛豁免公司,注册程序非常快捷,可快至24小时至48小时内收到开曼群岛公司注册处签发的注册成立文件。SPAC的成立程序与其他开曼群岛豁免公司的成立程序大致一样;不同的是,SPAC的公司章程大纲细则中载有某些SPAC规定,包括监管SPAC订立潜在业务合并(即de-SPAC交易)的条文。公司章程大纲细则将规限SPAC在其整个存续期间(通常是两年)的运营,直至SPAC找到并完成de-SPAC交易为止。如果没有在规定的存续期内完成交易,或者如果SPAC所找到的de-SPAC交易不获所必须的大多数投资者批准,那么SPAC会被清盘及解散,而认购资金也会在扣除与SPAC相关的首次公开招股开支和运营费用后返还给投资者(如果发生这种情况,创始人将在清盘时失去其承担风险的资本)。SPAC的公众股东即使投票支持de-SPAC交易,也将有权赎回其在de-SPAC交易下的股份(并取回其投放的资金)。

在成立SPAC的同时,一般还会成立另一家开曼群岛实体作为SPAC的“保荐人实体”(sponsor vehicle),虽然可于特拉华州等在岸司法管辖区成立这类保荐人实体。如果使用开曼群岛保荐人实体,它将会是另一家开曼群岛豁免公司,也可以是一家“开曼群岛有限责任公司”或“开曼群岛豁免有限合伙企业”。

“ SPAC 成立为一家开曼群岛豁免公司,注册程序非常快捷

The SPAC is set up as a Cayman Islands exempted company and can be established quickly

would then be returned to investors, minus certain expenses associated with the SPAC IPO and the SPAC's maintenance (if this occurs, then the founders will lose their capital on liquidation). The public shareholders of a SPAC will be entitled to redeem their shares (and receive the return of their funds) under a de-SPAC even if they vote for the de-SPAC to occur.

In addition to the SPAC, a Cayman Islands vehicle is also generally formed at the same time to act as the sponsor vehicle to the SPAC although the sponsor vehicles can be set up in onshore jurisdictions (such as Delaware). If a Cayman Islands sponsor vehicle is used, it is either another Cayman Islands exempted company, a Cayman Islands limited liability company (LLC) or Cayman Islands exempted limited partnership (ELP).

The Cayman Islands LLC (which is modelled on the Delaware LLC) was introduced in 2016 and has recently started to gain more traction in China and Asia as investors, asset managers and promoters have become more familiar with its flexibility and advantages when contrasted against more traditional corporate structures. A significant number of the SPAC transactions the Maples Group acts on now involve the establishment of a Cayman Islands LLC to act as the sponsor vehicle.

The Cayman Islands LLC is an entity with corporate legal personality (unlike the ELP, which technically does not have

开曼群岛于2016年推出开曼群岛有限责任公司(仿效特拉华州有限责任公司)。近来,随着投资者、资产管理人和发起人越来越熟悉这种结构优于较传统公司结构的灵活性和其他优势,开曼群岛有限责任公司也在中国和亚洲越来越受欢迎。在Maples集团目前处理的大量SPAC交易中,很多都涉及成立开曼群岛有限责任公司作为保荐人实体。

开曼群岛有限责任公司是一家具有企业法人资格的实体(与在技术上不具有独立法人资格的豁免有限合伙企业不同)。在开曼群岛有限责任公司的架构下,投资者也可享有在合伙企业架构中常见的灵活性,协定有关经济的条款(例如资本帐和分派方法)。

开曼群岛有限责任公司的另一个优势,是可按照SPAC发起人和创立投资者的特定商业要求草拟开曼群岛有限责任公司运营者的义务和责任。《开曼群岛有限责任公司协议》可授权各方为自己的利益行事,这与通过公司建立的商业安排不同(因为此类公司的董事具有受信人责任,必须按照公司的整体利益行事,而不是按照委任他们的投资者的利益行事。或许这是一种较现实的治理方法)。保荐人的投资者通常包括SPAC的发起人(例如按照SPAC董事会行事的发起人或个人)。我们预期,亚洲区的SPAC交易项目中使用开曼群岛有限责任公司及其他开曼群岛实体(例如豁免有限合伙企业)的数量将会增加。

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a separate legal personality) that also provides investors with the flexibility typically found in a partnership context to agree economic terms, such as capital accounts and distribution mechanics. Another advantage of the Cayman Islands LLC is that the obligations and duties for its operators can be drafted in order to suit the specific commercial requirements of the SPAC promoter and the founding investors. The Cayman Islands LLC agreement can authorise each party to act in its own interests as opposed to commercial arrangements structured through companies (where directors of those companies have fiduciary duties that require them to act in the interests of the company as a whole, rather than the investors who appointed them, which is perhaps a more realistic governance approach). The sponsor's investors will typically include the promoters of the SPAC (such as the promoters or individuals who will be acting on the board of the SPAC). We expect that the use of Cayman Islands LLCs will continue to increase in connection with Asia SPAC transactions, together with other Cayman Islands structures such as ELPs.

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