

Choosing your offshore listing vehicle - key factors to consider / 选择境外上市主体 — 考量的关键因素

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Legal jurisdictions 司法管辖 / British Virgin Islands, Cayman Islands, Hong Kong, Singapore 英属维尔京群岛, 开曼群岛, 香港, 新加坡

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Introduction

Offshore vehicles or companies incorporated in international financial centres (IFCs), including Bermuda, the British Virgin Islands (BVI), the Cayman Islands, Jersey and Guernsey have long been a popular choice for listing vehicles and feature in over 20 exchanges across the world including Australia, London, New York, Hong Kong, Singapore, Taiwan and more recently Shanghai. With just under 200 IPOs of offshore listing vehicles last year alone, and during these times of international political uncertainties, market disruptions and regulatory reforms, their popularity only looks set to continue to grow.

引言

在包括澳大利亚、伦敦、纽约、香港、新加坡、台湾在内的全球 20 多个交易所，长期以来一直热衷于在百慕大、英属维尔京群岛、开曼群岛、泽西岛和根西岛等国际金融中心 (IFC) 注册离岸载体或离岸公司作为上市主体，并成为一种流行趋势，近期上交所也加入其中。仅去年一年，即有近 200 家离岸上市主体发起首次公开募股 (IPO)。当前环境下，国际政治不确定性、市场动荡叠加监管制度改革，离岸上市主体似乎将更为普及。

On the London Stock Exchange there are more than 320 offshore vehicles listed with Guernsey and Jersey companies featuring dominantly. In the US and Asia however, Cayman, Bermuda and BVI companies are the offshore heavyweights; with Cayman remaining a favourite offshore jurisdiction of choice for not only listings on Asian stock exchanges, but also listings by Asian businesses on international stock exchanges around the world including in the United Kingdom and the US.

Most notably, the listing of Alibaba was through the use of a Cayman listing vehicle on the New York Stock Exchange, which raised more than US\$25 billion in September 2014 making it the world's largest ever IPO. In Hong Kong, by the end of 2019, Cayman vehicles accounted for more than 50% of companies listed on the main board of the Stock Exchange of Hong Kong (HKEX), and between January and July 2020 approximately 95% of total listings on HKEX used a Cayman company as the listing vehicle. In Taiwan, when the Taiwan Stock Exchange opened its doors to foreign issuers, a Cayman Islands exempted company became the first foreign company to be listed on that exchange in 2010 (and since then more than 100 Cayman companies have followed suit and listed or registered on that exchange and the Taipei Exchange). That trend is set to continue following the launch of the Science and Technology Innovation Board of Shanghai Stock Exchange (STAR Market) in July 2019, where the first ever listing of a 'red chip' company (i.e. companies incorporated in foreign jurisdictions with main business operations in China) was a Cayman vehicle. To date, 100% of 'red chip' companies listed on the STAR Market are Cayman vehicles.

伦敦证券交易所 320 多家离岸上市公司中，绝大多数在根西岛和泽西岛注册；而在美国和亚洲地区，重量级境外上市公司的注册地在开曼、百慕大和英属维尔京群岛。对于亚洲证券交易所上市公司以及全球各地（包括英国和美国）国际证券交易所上市的亚洲企业而言，开曼仍然是首选离岸地。其中最著名的实例，2014 年 9 月，阿里巴巴通过一家开曼上市主体实现在纽约证券交易所上市，募集资金超过 250 亿美元，成为全球有史以来最大的 IPO。在香港市场，截至 2019 年底，香港交易所（“港交所”）

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主板上市公司中，开曼公司占比超过 50%，而在 2020 年 1 月至 7 月期间，港交所上市企业中，大约 95% 利用开曼公司作为上市主体。台湾证券交易所市场向外资发行商开放后，2010 年，一家开曼群岛豁免公司成为第一家在该交易所上市的外国公司（此后，已有 100 多家开曼公司效仿，在台湾证交所和台北交易所上市或注册）。2019 年 7 月，上海证券交易所科创板（STAR Market）正式开市，在该板块首次上市的一家“红筹”公司（红筹公司是指注册地在境外、主要经营活动在中国境内的企业）是一家在开曼注册的企业，预示着这一趋势将会持续。目前为止，科创板上市的“红筹”公司全部为开曼公司。

More recently, we've seen a resurgence in the use of special purpose acquisition companies (SPACs) or 'cash shells' to raise funds through IPOs for the purposes of acquiring or merging with target entities (similar to a reverse merger), with Cayman SPACs accounting for a majority of non-US SPACs listed on Nasdaq. Given current geopolitical and other considerations, we've also seen US-listed Cayman incorporated Chinese businesses looking to 'return home' by seeking secondary or new listings on HKEX or Chinese exchanges.

本所留意到，利用特殊目的收购公司（SPAC）或“现金壳公司”，通过 IPO 筹集资金收购或合并目标公司（类似于反向合并）最近开始卷土重来，在纳斯达克上市的非美资 SPAC 中，开曼 SPAC 占据绝大多数。同时，鉴于当前的地缘政治形势和其他因素，在开曼注册并赴美上市的中国企业有意“归国”，正寻求在港交所二次上市或在深沪两市重新上市。

Why are the Cayman Islands so popular for IPOs and what factors should be considered when choosing your listing vehicle?

开曼群岛为何会成为 IPO 的热门之地，选择上市主体时应考虑哪些因素？

The answer is a relatively simple one: the Cayman Islands offers stability, corporate law flexibility a trusted legal system (with their roots in English law), tax neutrality, minority shareholder protection and lower costs whilst continuing to adapt and align with international gold standards. Cayman vehicles are accepted by exchanges, institutional and private investors, rating agencies, underwriters and regulators around the world.

答案相对简单：开曼群岛具备稳定的环境、公司法灵活方便、具备值得信赖的法律体系（源于英国法律）、税收中立、保护少数股东权益、费用相对低廉，同时持续套用国际标准并与此类标准接轨。开曼上市主体被世界各地的交易所、机构和私人投资者、评级机构、承销商和监管机构广为接受。

When choosing your listing vehicle whether that be the Cayman Islands or elsewhere, there are a number of key factors that should be considered. The following highlights some of the potential advantages in using a listing vehicle incorporated in Cayman and the BVI. In particular, these two offshore jurisdictions continue to have a central role in Chinese deal flows and IPOs of Chinese businesses, having already become embedded in PRC corporate structures since the late 1980s.

选择上市实体（无论注册在开曼群岛或其他法域），应考虑众多关键因素。下文重点说明了使用开曼/英属维尔京群岛注册的上市主体的潜在优势。20 世纪 80 年代后期以来，前述两个离岸地已经融入中国企业结构，在中资企业交易流程和 IPO 中持续发挥着核心作用。

Trusted and reliable legal systems

Both Cayman and the BVI are recognised as leading IFCs in the world, combining advanced, flexible and business-friendly laws with balanced regulatory regimes and sophisticated professional infrastructures. As British Overseas Territories, the Cayman Islands and the BVI enjoy political and economic stability. Each jurisdiction's legal system is based on established English common law principles, with the final court of appeal being the Privy Council in London, if needed. This is a source of comfort for international investors who may seek reassurance that if rights need to be enforced before a court, it will be before a familiar and trusted system. Corporate and commercial statutes are continually being revised and improved in response to the demands of commerce. This ensures that both Cayman and BVI companies are well understood and accepted internationally.

可信赖、可靠的法律体系

开曼和英属维尔京群岛被公认为全球领先的国际金融中心，结合了先进、灵活和营商友好法律，稳定的监管制度和先进的专业基础设施。作为英国海外领地，开曼群岛和英属维尔京群岛享有稳定的政治和经济环境。前述两处离岸地，其法律制度均以公认的英国普通法原则为基础，必要时位于伦敦的枢密院将作为最终上诉法院。这一点令国际投资者感到欣慰和安心，如有必要，将根据其熟知、可依赖的法制体系，在法庭行使并维护其相关权利。公司法规和商事法规将根据商业需求不断修订和改进。确保国际上熟知并接受开曼和英属维尔京群岛注册企业。

Corporate law flexibility

Company laws in the BVI and Cayman are flexible and adaptable to the rules of most stock exchanges. Additionally, BVI and Cayman companies can adopt, institute, amend, modify or revoke corporate governance policies or initiatives as required by the listing rule requirements or expectations of the relevant exchange.

公司法灵活方便

英属维尔京群岛和开曼实施灵活的公司法规定，可适应多数证交所的规则。此外，英属维尔京群岛公司和开曼公司可以根据上市规则要求或应相关交易所要求，采用、制定、修订、修改或废除公司治理规定或措施。

In each of these jurisdictions, many aspects of the Companies Law of the Cayman Islands (**Companies Law**) or BVI Business Companies Act 2004 (**BC Act**), together with common law, provide the basic company law framework and building blocks for the life cycle of a company. Save where required by law, companies are generally permitted to adapt their articles of association or constitutional documents to alter, expand or refine that framework to a model that may be suitable or desired for a particular exchange or set of circumstances. For

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example, through its articles of association a Cayman or BVI company may set out its distribution policies, provide for the specific powers and duties of directors, cater for defensive takeover tactics such as 'staggered boards' and 'poison pills', allow for weighted voting rights (with Class A Shares and Class B Shares) and/or provide for additional shareholder protections.

开曼群岛《公司法》（《公司法》）或英属维尔京群岛 2004 年《商业公司法》（《商业公司法》）的许多方面以及普通法规定了覆盖公司全部生命周期的基本公司法框架和构件。除法律要求外，一般来说，允许公司调整章程或组织文件，将该框架更改、扩大或完善，成为适用或适合某一特定交易所或特定情形的模式。例如，开曼公司或英属维尔京群岛公司可在公司章程中列明分配制度，规定董事的具体权力和职责，配合“交错董事会”和“毒丸”等抵御型反收购策略，允许设立“双重股权架构”（A 类股和 B 类股）并/或规定为股东提供额外保护。

Both jurisdictions also have flexible distribution regimes. In the Cayman Islands, the most commonly used vehicle is an exempted company, which has both an authorised and issued share capital. Dividends may be paid out of profits or, provided that immediately following the payment the company is able to pay its debts as they fall due in the ordinary course of business (i.e. a 'cash flow' solvency test), from share premium. In the BVI, there is no concept of authorised share capital and no minimum share capital is prescribed in respect of a BVI business company. As a result, dividends may be paid provided simply that the directors are satisfied that immediately after the payment of the dividend, (i) the value of the company's assets will exceed its liabilities and (ii) the company will be able to pay its debts as they fall due (i.e. a combined 'cash flow' and 'balance sheet' solvency test).

两处离岸地都具备灵活的分配制度。开曼群岛最常见的形式为豁免公司，同时设置法定股本和已发行股本。股息可以从利润中支付，或者，如果支付利润后立即能够支付正常业务过程中的到期债务（即“现金流”偿付能力测试），则可以从股份溢价中支付。英属维尔京群岛商业公司不设法定股本，对最低股本也没有规定。因此，只要董事确信在支付股息后：(1) 公司的资产价值将超过负债，且 (2) 公司将能够支付到期债务，则可支付股息（即综合“现金流”和“资产负债表”的偿付能力测试）。

Cayman and BVI companies can be incorporated quickly and inexpensively, and may adopt a dual foreign name in a foreign script (such as Chinese). In each of the jurisdictions, there is no prohibition on the giving of financial assistance by a Cayman or BVI company.

开曼公司和英属维尔京群岛公司可以快速设立，成本低廉，并可采用以外国文字（如中文）书写的双重名称。无论在开曼还是英属维尔京群岛，对于该地区设立的公司均不禁止其提供经济援助。

Regulatory considerations

In the Cayman Islands and the BVI, there is no need to prepare or file a prospectus for companies making public offers outside Cayman or the BVI respectively, unless it is a Cayman mutual fund or BVI public fund (there is legislation drafted in relation

to the preparation of prospectus' in the BVI, but this has not come into force). This allows for a simplified process and the issuer may therefore focus on the listing rule requirements of the relevant exchange, without the need to consider any additional Cayman or BVI law requirements. Equally, there is generally no need to obtain the approval of any regulatory body or authority in either the Cayman Islands or the BVI in respect of the issuance or transfer of shares or depositary receipts (where the issuer is listing depositary receipts rather than shares).

监管考量因素

在开曼群岛和英属维尔京群岛，在该辖区以外地区进行公开发售的公司毋须分别编制或提交招股章程，除非该公司为开曼群岛共同基金或英属维尔京群岛公募基金（英属维尔京群岛已草拟有关编制招股章程的法例，但尚未生效）。如此，程序得以简化，发行人可专注于相关交易所的上市规则要求，而无需考虑任何开曼或英属维尔京群岛法律的任何其他要求。同样，在开曼群岛或英属维尔京群岛，发行或转让股份或存托凭证（如发行人上市交易的是存托凭证而非股份）一般无需获得任何监管部门或监管机构的批准。

More recently in 2018, the Cayman Islands Monetary Authority (CIMA) entered into a non-binding memorandum of understanding with the China Securities Regulatory Commission (CRSM) to facilitate regulatory cooperation in recognition of the increasing international activities in the securities, futures and other related investment products markets. In particular, through the MOU the regulatory bodies agreed to enhance the exchange of supervisory information and cross-border enforcement cooperation with regards to Cayman companies, which carry out public or private securities offerings in China and/or whose securities are trading on stock exchanges in China. This further strengthens and entrenches the relationship between China and the Cayman Islands. To date, there is no equivalent MOU between the competent authorities in the BVI and CRSM, but BVI and China have developed a close relationship over the years.

最近在 2018 年，有鉴于国际范围内证券、期货和其他相关投资产品市场交易活动日渐增多，为促进监管合作，开曼群岛金融管理局（CIMA）与中国证券监督管理委员会（“中国证监会”）签订了一份不具约束力的谅解备忘录。谅解备忘录中，两个监管机构同意，在中国开展公开或非公开证券发行和/或其证券在中国证券交易所交易的开曼公司范围内，加强监管信息交流和跨境执法合作，进一步加强和巩固了中国与开曼群岛之间的关系。迄今为止，英属维尔京群岛主管机构与中国证监会尚未签署相应的谅解备忘录，但英属维尔京群岛和中国多年来已经建立了密切联系。

Both Cayman and the BVI comply with all relevant international standards on financial regulation, AML, tax transparency and information exchange and this compliance is recognised by the relevant international bodies – most recently demonstrated by the EU's expected removal of the Cayman Islands from its temporary 'blacklisting' in October 2020.

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开曼和英属维尔京群岛均遵守对金融监管、反洗钱、税收透明度和信息交流进行规管的所有相关国际标准，此类合规得到相关国际机构的认可——欧盟预计将于 2020 年 10 月从临时“黑名单”中删除开曼群岛。

Taxation

In the Cayman Islands, there is no form of income, inheritance, gift, withholding, corporate or capital gains tax imposed on any Cayman company or its shareholders. Additionally, it is possible for a Cayman company to apply for an undertaking from the government that there will be no such taxes imposed, which usually lasts for a period of up to 20 years. Stamp duty may be applicable on instruments executed in, or brought within, the jurisdiction of the Cayman Islands, which is generally at a nominal amount.

税收

开曼群岛不对任何开曼公司或其股东征收任何形式的所得税、继承税、赠与税、预扣税、公司税或资本利得税。此外，开曼公司可向政府申请一项有效期可长达 20 年的、不征收此类税项的承诺。在开曼群岛管辖范围内签署或提交的文书，可能征收印花税，一般以名义数额收取。

In the BVI, there is no form of inheritance, gift, withholding, corporate or capital gains tax imposed on any BVI business company or its shareholders. BVI companies are specifically exempt from income tax and stamp duty (other than instruments relating to the transfer of an interest directly or indirectly in BVI land). Individuals resident in the BVI may be subject to local payroll taxation.

英属维尔京群岛不对任何英属维尔京群岛商业公司或其股东征收任何形式的继承税、赠与税、预扣税、公司税或资本利得税。英属维尔京群岛公司获特别豁免，免征所得税和印花税（与直接或间接转让英属维尔京群岛土地权益有关的文书除外）。居住在英属维尔京群岛的个人居民可能需要缴纳当地工资税。

Therefore, Cayman and BVI companies are tax neutral in terms of tax paid by shareholders – each shareholder will be subject to tax in its own taxable jurisdiction, but there is no ‘additional’ level of Cayman or BVI tax at the company level.

因此，开曼公司和英属维尔京群岛公司在股东待付税款方面保持税收中立——每个股东仅须支付应税司法辖区的税项，开曼或英属维尔京群岛在公司层面不征收任何“额外”的税款。

Exchange control

There are no exchange controls in Cayman or the BVI.

外汇管制

开曼或英属维尔京群岛没有外汇管制。

Transfer of shares

For Cayman companies, shares are transferred in accordance with the requirements of the articles of association. If shares are listed on an approved stock exchange, the shares can be evidenced and transferred in accordance with the laws, rules and regulations that apply to that stock exchange. There are no statutory pre-emption rights.

股份转让

开曼公司根据公司章程的要求进行股份转让。股份在经批准的证券交易所上市的，可以根据适用于该证券交易所的法律、规则和条例予以证明并转让。无法定优先购买权。

For BVI companies, an instrument of transfer is required to transfer shares. If shares are listed on a recognised exchange they may trade and settle freely in accordance with the rules and procedures of the recognised exchange. There are statutory pre-emption rights but those only apply when stated in the articles of association (and are usually expressly dis-applied).

英属维尔京群岛公司转让股份需要转让书。股份在经认可的交易所上市的，可根据该交易所的规则和程序自由交易和结算。公司有法定优先购买权，但仅在公司章程规定情况下适用（通常明文规定不适用）。

Investor confidence – director’s duties

Subject to the articles of association and the law, a company incorporated in Cayman or the BVI is managed by the directors of the Company which have all the powers necessary for managing, directing and supervising, the business and affairs of the company. Cayman and BVI companies have a single-tier board structure. In both jurisdictions directors owe fiduciary duties to the company.

投资者信心 — 董事职责

在符合公司章程和合乎法律的前提下，在开曼或英属维尔京群岛注册成立的公司由公司董事管理，董事拥有管理、领导和监督公司业务和事务所需的一切权力。开曼群岛公司和英属维尔京群岛公司采用单层董事会结构。两个司法管辖区董事均对公司负有诚信义务。

As a matter of Cayman Islands law, the duties of a director primarily derive from common law, the Companies Law, and the articles of association of the Company. Under common law principles that will be applied by the Cayman Islands courts, directors have fiduciary duties to a company including: (i) the duty to act honestly and in good faith in what he or she considers are the best interests of the company (generally meaning the interests of the shareholders as a whole); (ii) the duty of loyalty and to avoid actual or potential conflicts of interest arising between his or her duties to the company and his or her personal interest; (iii) a duty to exercise his or her powers as a director under the Companies Law and the articles of association of the company only for the purposes for which they are conferred and not for a collateral or improper purpose; (iv) a duty not to fetter his or her discretion as a director; and (v) a duty of care, diligence and skill.

根据开曼群岛法律，董事主要须遵守普通法、《公司法》和公司章程规定的职责。根据开曼群岛法院将采用的普通法原则，董事对公司负有诚信义务，包括 (i) 诚实守信，以其认为符合公司最佳利益（一般指全体股东的利益）的方式诚信行事；(ii) 忠诚责任，避免在对公司履行职责与其个人利益之间实际产生或潜在产生利益冲突。(iii) 仅根据《公司法》和公司章程规定为获授权之目的（不得为附带目的或不正当目的）行使作为董事的权力；(iv) 不限制其作为董事的自由裁量权；及(v) 注意、勤勉和技能义务。

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In the BVI, there is statutory footing to the equitable and common law duties owed by a director. In particular, as a matter of statutory law, a director must (i) act honestly and in good faith and what he believes to be in the best interests of the company, and (ii) exercise power for a proper purpose. Similar to Cayman, there is also a common law duty of care and skill.

在英属维尔京群岛，董事负有衡平法和普通法项下的职责，具有法律依据。特别是根据成文法，董事必须：(i) 诚实守信，以其认为最符合公司利益的方式诚信行事；(ii) 本着正当目的行使权力。与开曼群岛类似，董事也须履行普通法下的注意和技能义务。

A director must also act in accordance with any specific duties set forth in the articles of association from time to time. There is no need for a Cayman or a BVI listed company to appoint Cayman or BVI resident directors.

董事另须根据公司章程中不时规定的特定职责行事。开曼群岛或英属维尔京群岛上市公司委任的董事无须为开曼群岛或英属维尔京群岛居民。

Minority shareholder protections

Under common law principles, shareholders in a Cayman or BVI company are entitled to have the affairs of a company conducted in accordance with such company's articles of association and applicable law.

少数股东保护

根据普通法原则，开曼公司或英属维尔京群岛公司的股东有权要求按照该公司章程和适用法律处理公司事务。

As such, shareholders may bring personal or representative actions against a company in respect of breaches of their (and other similarly affected shareholders') rights as shareholders under the articles of association of the company and applicable law (for example, in the event that they are prevented from exercising voting rights).

公司章程和适用法律下作为股东的权利（和其他类似受影响的股东权利）受到侵犯（例如，无法行使投票权）的，该等股东可对公司提起个人或代表人诉讼。

A shareholder may also bring a derivative action in the name of a company in a limited number of circumstances, including in order to challenge any matter or act of the company which (a) is ultra vires the company or illegal; (b) constitutes a 'fraud on the minority' where the wrongdoers control the company; (c) constitutes an infringement of individual rights of shareholders (such as a right to attend and vote at a meeting); or (d) where the company has not complied with provisions requiring approval of a special or extraordinary majority of shareholders.

极有限情况下，股东可以公司名义提起股东代位诉讼，包括质疑公司的任何事项或行为 (a) 越权 或非法；(b) 过错方控制公司，构成“欺诈少数股东”；(c) 构成对股东个人权利的侵犯（如会议出席权和投票权）；或 (d) 公司未遵守要求多数/绝大多数股东批准的规定。

The law also gives power to the courts to wind up a company if the courts are of the opinion that it would be just and equitable to do so.

法律还赋予法院在认为公平公正时对公司进行清算的权力。

Additionally for BVI companies, a shareholder who considers that the affairs of a company have been, are being, or are likely to be, conducted in a way that is, or any act of the company has been, or is, likely to be oppressive, unfairly discriminatory or unfairly prejudicial to the shareholder in that capacity may apply to the BVI High Court for relief. The BC Act confers wide powers on the High Court to grant relief in the case of unfair prejudice.

此外，对于英属维尔京群岛公司，如果股东认为公司事务的处理方式或公司的任何行为已经、正在或可能对股东造成压迫、不公平歧视或不公平损害股东利益，可以股东身份向英属维尔京群岛高等法院申请救济。《商业公司法》赋予高等法院就不公平损害给予救济等广泛权力。

Both Cayman and BVI law provides that shareholders may be entitled to payment of the fair value of their shares upon dissenting from certain proposed transactions such as consolidations, mergers or in the case of BVI companies, where there is a disposal of a significant asset (being any sale, transfer, lease, exchange or other disposition of more than 50% in value of the assets or business of the company) not made in the usual or regular course of business.

开曼群岛及英属维尔京群岛法律均规定，针对特定拟议交易，例如合并、（或如为英属维尔京群岛公司）非在惯常或正常业务过程中出售重大资产（即出售、转让、租赁、交换或处置价值超过公司资产或业务 50%），股东提出异议的，股东有权要求按其股份的公允价值进行支付。

Business combinations, migrations and takeovers

The Cayman Companies Law makes specific provision for the acquisition of a Cayman Islands company by way of a court-approved scheme of arrangement, by way of mandatory squeeze-out following a tender offer, and by way of merger or consolidation. It is also possible to migrate Cayman companies to other jurisdictions and vice versa.

企业合并、迁移和收购

《开曼公司法》对经由法院核定的债务偿还安排、经由要约收购后的强制挤出、经由合并或整合方式收购开曼群岛公司作出了具体规定。开曼公司可迁出至其他管辖区，也可从其他管辖区迁入。

The BC Act makes specific provision for the acquisition of a BVI company by way of a court-approved scheme of arrangement or plan of arrangement, by way of forced minority shareholder redemption, and by way of merger or consolidation. It is also possible to migrate BVI companies to other jurisdictions and vice versa.

《商业公司法》对经由法院核定的债务偿还安排、经由强制少数股东赎回、经由合并或整合方式收购英属维尔京群岛公司作出了具体规定。同样，英属维尔京群岛公司可迁出至其他管辖区，也可从其他管辖区迁入。

续

In both jurisdictions, there is no takeover code or legislation applicable to BVI or Cayman listed companies (unless that company is regulated by BVI FSC or CIMA or, in the case of a Cayman company, it is listed on the Cayman Islands Stock Exchange), nor are there any statutory restrictions in respect of defensive mechanisms which the board of directors could utilise in respect of actual or potential takeover or merger offers, subject to their usual fiduciary duties.

在开曼和英属维尔京群岛，均不存在针对开曼上市公司或英属维尔京群岛上市公司的收购法规或法律（但受英属维尔京群岛金融委员会或 CIMA 监管的公司，或在开曼群岛证券交易所上市的公司除外），对于董事会在实际或拟将作出收购或合并要约时可能采用的抵御机制，也不设任何法律限制，但其惯常应遵守的诚信义务除外。

These features offer flexibility and creative solutions to any pre-IPO restructuring and/or reverse takeovers to their onshore counterparts, outside of a typical share swap. They are also particularly ideal for SPACs as they offer a quicker, lower cost and simplified process when it comes to the acquisition of target companies. Growing tensions between the US and China, heightened regulatory scrutiny of US-listed Chinese businesses by US regulators and potentially higher trading multiples upon a re-listing in China (or Hong Kong) are key drivers for the recent spate of “take-private” transactions of Cayman and BVI companies by way of arrangement, tender offers and statutory mergers.

依托上述优势，离岸地的任何 IPO 前重组和/或反向收购，可在典型的股份交换方法之外，提供比境内同行更为灵活、更具创造性的解决方案。该类解决方案使得收购目标公司更为快速、成本更低、流程更为简化，尤其适用于 SPAC。中美关系日益紧张，美国监管机构加大在美上市中国企业的监管检查力度，在中国（或香港）重新上市采用更高的交易倍数，是近期开曼和英属维尔京群岛公司通过偿债安排、要约收购和法定合并等方式进行“私有化”交易的主要原因。

Economic substance

Cayman and the BVI, together with other non-EU jurisdictions, recently introduced legislation in 2019 aimed at addressing concerns raised by the Council of the European Union as to offshore structures engaged in certain activities which attract profits without real economic activity. The regime introduced certain economic substance requirements for certain in-scope “relevant entities” which are engaged in certain “relevant activities” and receive relevant income from that. A “relevant entity” includes both Cayman and BVI companies (other than those which are tax resident outside of the respective jurisdictions). The “related activities” refer to nine types of business: banking; distribution and service centre; finance and leasing; fund management business; headquarters business; holding business; insurance business; intellectual property business; and shipping. Each of the Cayman Islands and the BVI have introduced guidance or rules, which expand on the economic substance requirements.

经济实质法

为解除欧盟理事会对离岸结构从事不满足经济实质要求的相关活动并从中赚取利润的担忧，开曼、英属维尔京群岛及其他非欧盟管辖区近期于 2019 年出台新立法。该制度规定，范围内的“相关实体”从事“相关活动”并从中赚取利润，应该满足经济实质要求。“相关实体”包括在开曼及英属维尔京群岛注册的公司（相关司法辖区以外的税收居民除外）。“相关活动”划分为九类业务：银行业务、分销及服务中心、融资与租赁、基金管理业务、总部业务、控股业务、保险业务、知识产权业务及航运业务。开曼群岛和英属维尔京群岛均出台了指导意见或规定，拓宽经济实质要求的适用范围。

Typically a listing vehicle will usually be a holding body. Provided that the listing vehicle only holds equity participation in other entities and only earns dividends and capital gains, it will be carrying on “holding company business” for the purposes of the economic substance regime and will be subject to reduced economic substance requirements, which requires the company to (i) comply with all applicable filing requirements under the relevant companies law; and (ii) have adequate human resources/employees and premises in the Cayman Islands or the BVI for holding and managing such equity participations in other entities. Unlike the other heads of “relevant activity”, the company will not be required to be “directed and managed” in the Cayman Islands or the BVI. When structuring the affairs of any potential listing vehicle, it is important to consider the intended activities of the listing vehicle, especially where it will be carrying on one or more ‘relevant activity’. For applications to the STAR Market, this will be a relevant factor for the exchange who will likely seek confirmation in respect of the impact of the economic substance law on not only the listing vehicle itself, but also the “controllers” of the listing vehicle (which may also be an offshore vehicle).

通常情况下，上市主体是一家控股机构。如果上市主体仅持有其他实体的股权，并只收取股息和资本利得，则该主体仅开展经济实质法规定的“控股业务”，只需满足简化的经济实质要求，也即要求须 (i) 满足相关公司法规定的所有适用的备案要求；(ii) 在开曼群岛或英属维尔京群岛配备足够的人力资源/员工和办公场所，以持有、管理其他实体的该类股权。与“相关活动”的其他项目不同，公司无需在开曼群岛或英属维尔京群岛“管理和指示”。对任何潜在上市主体之事务进行规划时，请务必考虑上市主体预期开展的活动，上市主体开展一项或多项“相关活动”时尤其如此。对于是否适用于科创板，这是一个相关因素，交易所除了求证经济实质法对上市主体本身的影响外，还将考量对于上市主体“控股方”（控股方可能同样为离岸主体）的影响。

Offshore leader

Carey Olsen’s global corporate team is one of the largest and most widely recognised in the offshore world, advising on all aspects of corporate law including IPOs, mergers and acquisitions, joint ventures, corporate restructurings and listings of both debt and equity securities on internationally recognised stock exchanges.

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离岸业务领导者

凯瑞奥信全球公司团队，作为离岸业务领域规模最大、业界公认的团队之一，就公司法的所有方面提供咨询，包括 IPO、合并和收购、合资企业、公司重组、债务证券和股权证券在国际知名证券交易所上市等。

Our “full service” Singapore and Hong Kong offices supply Asia-based clients with Mandarin and Bahasa language capability and on-the-ground legal advice on the laws of Bermuda, the BVI, the Cayman Islands and Jersey.

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The team at Carey Olsen Singapore have particular experience in acting for PRC clients and underwriters in connection with IPOs of Cayman and BVI companies on the STAR Market and US exchanges.

凯瑞奥信新加坡团队尤其专长于就开曼公司在科创板 IPO 相关业务向中国客户/承销商提供法律咨询服务。

续



Key contacts 主要联系人

For further information or professional advice please contact our lawyers below:
如欲获得进一步信息或专业意见，请联系以下律师：



Anthony McKenzie 麦安腾
Partner 合伙人

D 直线 +65 6911 8311
E 电邮 anthony.mckenzie@careyolsen.com



Susan McKinstry 麦舒珊
Senior Associate 高级律师

D 直线 +65 6911 8314
E 电邮 susan.mckinstry@careyolsen.com



Maggie Yan 严弘
Associate 律师

D 直线 +65 6911 8316
E 电邮 maggie.yan@careyolsen.com

Endnotes

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尾注

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FIND US / 联系我们

Carey Olsen (BVI) L.P.
Rodus Building PO Box 3093
Road Town Tortola VG1110
British Virgin Islands

T +1 284 394 4030
E bvi@careyolsen.com

Carey Olsen
PO Box 10008 Willow House
Cricket Square Grand Cayman
KY1-1001 Cayman Islands

T +1 345 749 2000
E cayman@careyolsen.com

Carey Olsen Hong Kong LLP
Suites 3610-13 Jardine House
1 Connaught Place Central
Hong Kong

T +852 3628 9000
E hongkong@careyolsen.com

Carey Olsen Singapore LLP
10 Collyer Quay #29-10
Ocean Financial Centre
Singapore 049315

T +65 6911 8310
E singapore@careyolsen.com



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