

UPDATE

Top 'Take-Aways' from the AVCJ SPACs Spotlight 2021 Webinar

The Asian Venture Capital Journal (AVCJ)'s SPACs Spotlight 2021 webinar was held on 29 April 2021. The webinar brought together over 330 private equity professionals including over 170 LPs, representing more than 230 different organisations from 19 geographical locations. The webinar focused on the key trends and best practices in SPAC investments and their significance to the PE industry including key considerations for Asian GPs when raising US-listed SPACs. Mourant was a Sponsor of the event. We share our top take-away points from the panel discussion.

The panel was moderated by Paul Christopher, Managing Partner of Mourant Ozannes, Hong Kong, and the panellists included Anthony Chan, CEO of Isola Capital; Chris Ho, Associate Director of Vickers Venture Partners; Denis Tse, CEO of ACE Equity Partners International; and Carl Wu, Co-Founder and CEO of New Frontier Group.

Reasons behind the SPAC boom globally and in Asia

SPACs raised a record US\$83bn in proceeds from 248 SPAC IPOs in 2020, compared with US\$13.5bn from 59 IPOs in 2019. In the first quarter of 2021, there have already been 298 SPAC IPOs raising over US\$88bn.

The panellists discussed the considerations and drivers (including changes and benefits) behind the SPAC boom based on their experience, summarised below.

- SPACs had been considered for several years by some GPs as a fund raising vehicle but historically there were challenges (eg insufficient understanding about the product in the market and a lack of market maturity (there were only 34 and 46 SPAC IPOs raising approximately US\$10bn in each of 2017 and 2018, respectively), but one panellist felt that the possible turning point came when shareholders at the de-SPAC stage could separately: (i) vote for or against the de-SPAC transaction; and (ii) still opt to redeem their shares. This change made the SPAC proposition generally more attractive to investors, who even post-redemption could retain warrants.
- SPACs have become significantly more institutionalised (and there is now much more familiarity in the market) than historically was the case - there are recognised investment banks arranging and leading the deals and raising funds from institutional grade investors on the PIPE at the de-SPAC stage.
- Asian GPs launching a SPAC may have a greater access to cross-border deals through a SPAC particularly in the US private market (eg US technology market), although there have been potential concerns as to access given geopolitical tensions (China/US).
- From a venture capitalist GP's perspective, the management of a SPAC is a good match with their skill set – to find the deals, pick the deals and nurture them – which is essentially the same as with their investment funds.
- The SPAC pool of capital is attractive for GPs who have assets to sell. With such significant amounts of capital being held in trust (414 SPACs with US\$138.2bn raised at present, with 384 SPACs having more than 12 months to run) and so many SPACs facing the ticking clock of 24 months to complete a transfer, it is a good time to sell if a business has high quality assets and is well prepared for the scrutiny of the public market.

- SPACs can raise a significant amount of funds in a short period of time. New Frontier raised about US\$480mn (and about US\$700mn from PIPE) through a SPAC launched in 2018 to acquire healthcare companies in the PRC.
- SPACs provide an avenue for family offices and others to gain access to deals that they may not otherwise access and/or that have historically been difficult to access, ie the mid-late stage of a venture company. Traditionally, family offices in Asia would seek such exposure via a fund which would come with the constraints of a lock-up (for several years) without the liquidity of a SPAC.

Key considerations for Asian GPs when raising US-listed SPACs

Choice of jurisdiction of incorporation of SPACs

- The panellists agreed that the Cayman Islands is typically the choice of SPAC-incorporation jurisdiction for an international acquisition strategy (as opposed to Delaware for a US based target strategy) as it provides geographical flexibility and tax neutrality.
- From an accounting perspective, there have been successful cases of non-US assets merging with a US listed SPAC which is a foreign private issuer, where the target's adoption of US GAAP is not a pre-requisite for such merger (ie it can continue to adhere to IFRS) – this provides a wide variety of investment opportunities that otherwise might find merging with a SPAC a barrier from an accounting perspective.

Other structuring considerations on alignment of interests

- As the SPAC surge has continued, LPs have raised concerns that GPs may be distracted by sponsoring a SPAC (including concerns on where the deals might go, how time, resources and deals are allocated), consequently fund-owned SPACs may provide an answer to those concerns and create a strong alignment of GP and LP interests.
- A SPAC structure may become more attractive than a traditional Cayman segregated portfolio company or a limited partnership GP/LP structure for family offices given the immediate liquidity and inherent flexibility (in terms of funding on incorporation, pursuit of opportunities for acquisition and the ability to liquidate an investment post de-SPAC) with perhaps limited risk in the pre de-SPAC.
- A Cayman incorporated SPAC vehicle can migrate its incorporation to Delaware (or other jurisdiction which accepts inward migrations) if the eventual target is a US asset.

Seeking target companies in Asia

What are the top sectors and other considerations for de-SPAC?

- Many SPACs are trying to describe their eventual target in terms that are as broad as possible in their listing prospectus so as to avoid a barrier to their search for a target.
- With the fast growing rate of SPACs in the market, there may be competition for high quality targets in Asia. Those targets will have more choices of SPACs to merge with.
- How to differentiate a SPAC looking for a target?
 - Targets appreciate sponsor's expertise and experience in prior deals and other softer aspects and expertise they can bring to the table.
 - To be a successful sponsor, alignment of interests is critical, including interests of the public shareholders, the PIPE, investors and the target company.
- From the perspective of a seller of assets/target:
 - Having ownership of certain Asian assets still makes it difficult to pursue a merger with a US SPAC due to cross border merger tax issues, eg it is still uncertain as to how to merge a Korean asset with a US SPAC. So it is important to understand local rules.
 - The sponsor's ability to raise and deliver a PIPE determines the extent of additional capital that will be available for the purposes of the de-SPAC.
- One consideration of Asian opportunities is the emerging corporate spin-out from some of the larger Asian trading groups, some of which are going through a strategic repositioning. There may be divestitures, even of business units that are of higher strategic importance but which do not have enough international exposure themselves to otherwise make use of the US capital markets.

The future of SPACs

Will we see SPACs listed locally on the Hong Kong or Singapore Stock Exchange?

- The panel discussed their views on the possibility of listing SPACs on the Hong Kong or Singapore stock exchange in the future and how that may impact the future of SPACs if listing them locally in the region is possible.
- It was generally regarded as beneficial to have alternative listing venues for SPACs, particularly in the Asia region, especially given the supply of Chinese assets or emerging market assets. Cultural affinity (in terms of how to manage the business and communications) with Asian targets and smaller SPACs appropriate for target sizing were among the benefits cited.
- Potential challenges raised for Hong Kong included the Hong Kong Stock Exchange's historical view against reverse takeover/merger and the depth of capital markets in Asia generally.
- There was also discussion on the recent US SEC statements on forward looking statements and projections, particularly the distinction from the position in a traditional IPO where these are not allowed. The panel felt that there could be policy challenges for the regulators, such as who should be held accountable for forecasts and forward looking statements. One consideration proposed for the regulators was to consider regulating the sponsor of the de-SPAC deal.
- Issues raised by the US SEC (including the recent announcement relating to the treatment of warrants) may be useful considerations for the stock exchanges and regulators of Hong Kong and Singapore.

Are SPACs here to stay?

- All panellists agreed that SPACs are definitely here to stay, and could play a meaningful role in the capital markets as companies seek alternatives to traditional IPOs. Some panellists queried to what extent it would become a mainstream product or maintain recent boom levels.

The panel's take-aways

- This SPAC surge is just the first wave, the next wave will see more sophisticated transactions and further innovations.
- Target quality and post-merger performance of SPACs will be key to determining whether this becomes a mainstream product alongside PE and VC.
- The quality of sponsors is key from the perspective of an investor, as sponsors look for the deal, negotiate and execute the deal with hopefully appropriate valuations to have a successful de-SPAC.

Contacts



Hayden Isbister
Managing Partner, Mourant Ozannes
Cayman Islands
+1 345 814 9125
hayden.isbister@mourant.com



Paul Christopher
Managing Partner, Mourant Ozannes
Hong Kong
+852 3995 5700
paul.christopher@mourant.com



Alex Last
Partner, Mourant Ozannes
Cayman Islands
+1 345 814 9243
alex.last@mourant.com



Catherine Pham
Partner, Mourant Ozannes
Cayman Islands
+1 345 814 9247
catherine.pham@mourant.com



Neil McCarroll
Mourant Ozannes (Jersey) LLP
+44 1534 676 068
neil.mccarroll@mourant.com



Jessica Lee
Counsel, Mourant Ozannes
Hong Kong
+852 3995 5709
jessica.lee@mourant.com

This update is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this update, please get in touch with one of your usual contacts. You can find out more about us, and access our legal and regulatory notices at mourant.com. © 2021 MOURANT OZANNES ALL RIGHTS RESERVED