



BVI Companies Can Now List in Hong Kong

The Hong Kong Stock Exchange (“HKSE”) has just allowed companies incorporated in the British Virgin Islands (“BVI”) to list on the HKSE. This decision from the HKSE was made as part of the Hong Kong government’s initiatives to ensure that Hong Kong remains attractive and competitive as a financial centre. The HKSE is diversifying the source of listing candidates as some groups, including Russian companies are looking to diversify their capital raising away from the Western markets and looking to Asia.

Bermuda and the Cayman Islands (“Cayman”) have long been accepted jurisdictions for incorporation of companies proposing to list in Hong Kong and over the years, both jurisdictions have proved to be extremely popular because, amongst other reasons, both of these jurisdictions are recognized on the world’s major stock exchanges and are tax neutral jurisdictions.

BVI companies have been used extensively in private equity transactions because:

- BVI is a tax neutral and flexible jurisdiction
- Relatively low maintenance costs
- Ease of post-incorporation administration
- Investor familiarity with over 400,000 active business companies

Since BVI companies are allowed to list on HKSE, it is expected that the use of a HKSE listing as an exit option for private equity investors with investments in China using BVI vehicles is likely to increase.

From our experience with listings of BVI companies on the Alternative Investment Market (“AIM”) of the London Stock Exchange (“LSE”), New York Stock Exchange (“NYSE”) and NASDAQ and our experience with listings of Bermuda and Cayman incorporated companies in Hong Kong, the traditional pre-IPO restructuring steps would involve the incorporation of a BVI listing vehicle (“BVI Listco”) and the reorganization of the group structure (by e.g. a share swap) resulting in the BVI Listco becoming that group holding company, which will then be listed.

Where BVI holding company is already in place, the pre-IPO restructuring and listing process of the BVI company can be simplified. Subject to the listing rules of the HKSE, the existing BVI holding company can act as the listing vehicle and be listed without going through the traditional pre-IPO restructuring steps. However, as the existing BVI holding company may have undertaken various fund-raising exercises, guidance should be sought on its existing operations, constitutional documents, corporate records and any private equity arrangements.

The BVI government signed a Tax Information Exchange Agreement (“TIEA”) with China on 7 December 2009 and the TIEA will allow exchange of information by request on tax matters in accordance with the terms agreed. With the TIEA in place, BVI’s profile and competitiveness will be improved. This positive development together with the HKSE’s decision to accept BVI companies for listing in Hong Kong raises BVI’s standing in the international investment community. It is expected that BVI will become even more prominent as a jurisdiction of choice for investors looking to make pre-IPO investments in China with a view for eventual listing on HKSE.

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