

Cash box transactions: the use of Jersey companies

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This briefing document explains how a United Kingdom public limited company ('PLC'), which is listed on the main list of the London Stock Exchange or on AIM, may use a Jersey company in a 'cash box' transaction where PLC is raising money either through a placing of its shares, a rights issue or where a convertible bond is issued.

Ogier have advised on more cash boxes than any other firm and have the experience and expertise to assist PLCs with any offshore structuring. Cash boxes have been used by not just PLCs listed on the Main List of the London Stock Exchange but also by AIM listed companies.

The benefits of using a Jersey company in a cash box transaction

The use of a Jersey company may:

- allow PLC to issue new shares without the timetable and expense implications of complying with United Kingdom Companies Act pre-emption provisions;
- permit PLC to take advantage of merger relief under section 612 of the UK Companies Act 2006, (if the redeemable preference shares are structured in such a way that they do not constitute "equity share capital");
- avoid the need to prepare Listing Particulars for PLC; and
- ensure any timetable associated with any placing is flexible so as not to be dependent on any particular stage of the larger transaction to which the placing or rights issue relates.

What is a cash box transaction?

A cash box transaction involves the incorporation of a new company ('Newco') in Jersey. Newco is

managed and controlled in the United Kingdom and is resident in the United Kingdom for tax purposes so that the HM Treasury consent is not required in respect of the issue or transfer of Newco shares.

Assuming that PLC will wish to create distributable reserves using the merger relief provisions under the Companies Act 2006, the underwriting or placing bank (the “Bank”) will subscribe for 11%, and PLC will subscribe for 89% of the ordinary shares in Newco.

Newco will issue redeemable preference shares to the Bank pursuant to a share subscription and transfer agreement. The share subscription and transfer agreement is conditional upon closing and admission of the placing shares of PLC to the appropriate stock exchange. At this time the subscription for the redeemable preference shares becomes unconditional and such shares are issued.

The share subscription and transfer agreement also provides for the transfer of the redeemable preference shares to PLC. The amount paid up on the redeemable preference shares is usually equal the total net proceeds expected to be raised from the placing of the ordinary shares by PLC less any commissions and expenses payable to the Bank.

At closing, contemporaneously with the allotment of the redeemable preference shares to the Bank, the shares of PLC are allotted to persons nominated by the Bank (the ‘Investors’).

The Investors pay the subscription monies for the PLC shares to the Bank. These monies are then used by the Bank to pay up the consideration for the redeemable preference shares in Newco.

The register of members for Newco is kept in Jersey so there is no liability to stamp duty on the transfer of the redeemable preference shares (and ordinary shares by the Bank to PLC if merger relief is being utilised).

In consideration of the allotment to the Investors of the shares in PLC, the Bank transfers the redeemable preference shares in Newco to PLC. The allotment is for a non cash consideration and so the statutory pre-emptive provisions in the United Kingdom Companies Act 2006 do not apply.

At the end of this process, and on the same day as admission of the shares of PLC to the relevant stock exchange, PLC will hold all the issued ordinary and redeemable preference shares in Newco and shall then be entitled to redeem the redeemable preference shares, usually at a price per share equal to that paid for such shares by the Bank.

The redemption of the redeemable preference shares will be a disposal by PLC for capital gains tax purposes in the United Kingdom but it should be possible to structure matters such that PLC has a market value base cost in the redeemable preference shares so no gain will arise on disposal.

Taxation in Jersey

Newco, although incorporated in Jersey, is resident in the United Kingdom for tax purposes. As a result

of Article 123 of the Income Tax (Jersey) Law 1961, for Jersey taxation purposes Newco will be deemed to be non-resident and not subject to any tax whatsoever in Jersey provided that it is managed and controlled in the United Kingdom.

In addition, there is no capital gains tax, corporation tax, V.A.T. or other withholding tax in respect of the issue, transfer or redemption of shares in Jersey. No stamp duty is payable locally on the transfer of shares and there are no annual taxes or charges by reference to a company's authorised or issued share capital.

No par value shares or par value shares?

Although historically, for ease of returning capital, no par value companies were used, the Companies (Jersey) Law 1991 was amended in 2008 so that par value companies also have the same flexibility when returning capital to shareholders. The current preference, in order to ensure compliance with the UK Companies Act merger relief provisions, is for par value companies to be used with redeemable preference shares which have a low par value of £0.01 or less.

Legal and administration services

Ogier can offer all services which PLC may require under Jersey law for a cash box transaction and has a great deal of experience having acted for over 100 PLC's in cash box transactions with an aggregate value in excess of £88 billion. Ogier, the law firm, can provide all legal advice and can draft all the necessary documentation in relation to Newco whilst Ogier Global (Jersey) Limited provides all registered office, secretarial and administrative services as well as incorporating Newco on behalf of PLC. There is a close working relationship between Ogier and Ogier Global (Jersey) Limited so that a co-ordinated and bespoke professional "one stop shop" service is offered to PLC with obvious attractions as to efficiency and cost.

Summary

Reasons for using Jersey as the offshore jurisdiction for a cash box transaction include the following:

- the availability of no par value companies;
- tax neutrality for Newco (including no stamp duty);
- the similarity of English and Jersey companies law;
- flexibility of approach under Jersey law to suit client's requirements;
- the availability of a "one-stop shop" for legal and administration services;
- proximity in time and distance to London; and

- previous experience and established know how of Ogier with regards to cash box transactions.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

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Meet the Author



Raulin Amy

Partner

Jersey

E: raulin.amy@ogier.com

T: [+44 1534 514239](tel:+441534514239)

Key Contacts



Simon Dinning

Partner

Jersey

London

E: simon.dinning@ogier.com

T: [+44 1534 514251](tel:+441534514251)



Nathan Powell

Partner □□□

Hong Kong

E: nathan.powell@ogier.com

T: [+852 3656 6054](tel:+85236566054)



Alexander Curry

Partner

Jersey

E: alexander.curry@ogier.com

T: [+44 1534 514032](tel:+441534514032)

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