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Corporate investors - using a Jersey incorporated company

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There has been continuing use of Jersey companies as holding companies as part of a group restructurings.

The principal advantage of using a Jersey company is the flexibility of Jersey company law in relation to returns to investors - whether by means of dividend, redemption of share capital or share buy-back. In particular, monies payable on the redemption of redeemable shares or on the buy back of shares by a Jersey company, may be funded from any source - including capital. A Jersey company may also make a distribution from a wide range of sources, not merely from distributable profits.

A Jersey holding company also facilitates a tax efficient exit through stamp duty savings and is also suitable for listings on many exchanges around the world.

Tax Regime

A zero rate of income tax applies to virtually all Jersey companies.

However, if required, it is possible to ensure that a Jersey company is tax resident in another jurisdiction provided that:

- it is centrally managed and controlled in another jurisdiction outside Jersey;
- it is tax resident in that other jurisdiction; and
- the highest rate of corporation tax in that other jurisdiction is 10% or above.

No stamp duty is payable on the transfer of shares in a Jersey company and there is no corporation or capital gains tax in Jersey. Jersey levies no annual taxes or charges by reference to a company's authorised or issued share capital. Although Jersey has recently introduced a goods and services tax at a rate of 5 per cent, companies beneficially owned outside Jersey which do not supply goods or services in Jersey will generally qualify for "international service entity" status - effectively bringing them outside the scope of the goods and services tax regime provided that a fee of £300 is paid each year.

Jersey also now has economic substance legislation which requires that all companies that are Jersey tax resident or deemed tax resident need to comply with the Taxation (Companies – Economic Substance) (Jersey) Law 2019. In summary this means that such companies which are undertaking relevant activities (as defined in the law) must be managed and directed in Jersey, have appropriate employees/administration activities and expenditure in Jersey and undertake the core activities relating to the relevant activities in Jersey. Further information on this can be found in our briefing here

Returns to Investors

It is possible to structure returns to investors by way of capital returns by means of redemption or buy back of shares or cash distributions (or a combination of these methods). Jersey company law is very flexible on the sources of funding for redemption of share capital and in relation to requirements for distributions.

Redemption and buy back of shares

Monies payable on the redemption of redeemable shares or on the buy back of shares by a Jersey company may be funded from any source - including capital.

The directors responsible for authorising the redemption or buy back payment will be required to make a statement that they have formed the opinion that:

• immediately following the date on which the payment is to be made, the company will be able to discharge its liabilities as they fall due; and

• having regard to -

(i) the prospects of the company and to the intentions of the directors with respect to the management of the company's business, and

(ii) the amount and character of the financial resources that will, in their view, be available to the company,

the company will be able to -

(a) continue to carry on business, and

(b) discharge its liabilities as they fall due,

for a period of 12 months after the date of such payment (or, if sooner, a solvent winding up of the company).

Therefore, provided that the solvency statement can be made, there is considerable flexibility in funding the redemption or share buy back.

Distributions

A Jersey company may make a distribution from a wide range of sources, not merely from distributable profits. Therefore, distributions may be made from capital without a need to obtain Court approval for a reduction of capital (as was previously the case).

A distribution may be debited from any account of the company (including the share premium account and the stated capital account) other than the capital redemption reserve or the nominal capital account. The fact that distributions may be made from the stated capital account of a no par value company but not the nominal share capital of a par value company may lead to an increased use of no par value companies in the future.

A distribution may only be made if the directors authorising the distribution make a solvency statement in the form referred to above.

Financial Assistance

There is no prohibition on any Jersey public or private company giving financial assistance to its members.

Debt Listing

A group re-organisation may involve the issue of loan notes in connection with the acquisition financing. The International Exchange ("TISE") was designated by the UK Inland Revenue as a recognised stock exchange under Section 841 of the UK Income and Corporation Taxes Act 1988 in 2002. This designation means that qualified debt securities listed on the TISE are eligible for the "Quoted Eurobond Exemption" which allows an issuer within the UK tax net to make payments of interest on the listed securities gross without deduction for tax.

Ogier Corporate Finance Limited ("OCFL") is a full listing member of the TISE and is able to act as sponsor for listing purposes, having extensive expertise in this area. OCFL is the leading sponsor of listings on the TISE and in particular has a 34% market share of all Eurobond listings.

Further details of the services provided by OCFL are available on request.

Exit by IPO

Jersey incorporated companies are increasingly being used for listing on the Alternative Investment Market of the London Stock Exchange and also on the main market of the London Stock Exchange. In addition, Jersey companies are linked on several other exchanges including NYSE, NASDAQ, Toronto and Hong Kong. A separate briefing on the advantages of using a Jersey company for a listing is available on request.

Why use Jersey?

Reasons for using Jersey include:

• Jersey is a leader among the offshore jurisdictions and has a top-tier reputation;

• as one of the largest offshore jurisdictions Jersey has the legal and administrative depth and expertise to facilitate complex transactions;

• Jersey companies law is based on English companies law but tends to be more flexible;

• fast track incorporation of companies (same day if required);

• Jersey’s close proximity to, and same time zone as, London makes closing transactions a simpler process; and

• an extremely favorable corporate tax regime and no stamp duty on transfer of shares in Jersey companies.

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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