GUIDE

The use of Jersey companies in cash box structures

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Background

A UK listed company (the **Issuer**) that wishes to raise cash by the issue of shares, otherwise than pro rata to its existing shareholders, is restricted by the pre-emption rights regime under the Companies Act 2006.

Shares issued for non-cash consideration are not subject to the same restrictions. Cash box structures allow an Issuer to raise cash by issuing shares without the need for a shareholder meeting, by enabling it to issue shares for non-cash consideration.

This guide describes some of the reasons for using cash box structures, how they work, and why Jersey companies are particularly well suited to cash box transactions.

Mourant has vast experience providing Jersey legal advice on cash box transactions, and through Mourant Governance Services we can incorporate and administer Jersey cash box vehicles under one-roof.

Uses of cash box structures

Cash box transactions are most commonly used in connection with cash placings by an Issuer to raise new equity.

Where an Issuer is unable to utilise a general disapplication of pre-emption rights under section 570 of the Companies Act 2006, using a cash box structure removes the need for the Issuer to obtain a specific disapplication of pre-emption rights in respect of the acquisition, thereby saving the expense and delay of convening a shareholder meeting. Further, often the proposed use of the required cash is highly confidential, with the effect that it will not be feasible to call a shareholders' meeting as the proposed transaction cannot be described in public.

Cash box structures may also be used in convertible bond issues and for rights issues to create distributable reserves.

In relation to rights issues, the use of a cash box allows the Issuer to obtain merger relief, thereby enabling it to create distributable reserves rather than share premium upon the issue of the new ordinary shares pursuant to the rights issue. Even in a rights issue it may also be useful to have an element of flexibility in relation to pre-emption rights, particularly if the Issuer has a number of overseas shareholders.

Before undertaking a cash box, an Issuer should have regard to the statement of principles published by the UK Pre-Emption Group, which makes specific reference to cash box structures.

How a cash box structure works

Incorporation of a subsidiary

The Issuer incorporates a new subsidiary which acts as the cash box vehicle, usually incorporated in Jersey but managed and controlled in the UK (**JerseyCo**). If merger relief is to be sought, it is usual for a proportion of the equity share capital of JerseyCo to be held by the institution(s) acting as dealers or managers in relation to the placing (the JerseyCo Subscriber). JerseyCo will also have a class of redeemable preference shares for issue to the JerseyCo Subscriber.

Subscription of shares in JerseyCo

The Issuer, the JerseyCo Subscriber and JerseyCo enter into a series of agreements under which:

- the Issuer and the JerseyCo Subscriber agree to subscribe for and pay up their respective ordinary shares in JerseyCo;
- the JerseyCo Subscriber agrees to subscribe for the redeemable preference shares in JerseyCo to be issued fully paid for an amount equal to the net proceeds of the placing, and to transfer all of the shares in JerseyCo held by it to the Issuer in return for the issue by the Issuer of shares to placees determined by the JerseyCo Subscriber; and
- the Issuer agrees to issue new shares to placees selected by the JerseyCo Subscriber in exchange for the transfer to the Issuer by the JerseyCo Subscriber of the shares that the JerseyCo Subscriber holds in JerseyCo.

The agreements also contain option arrangements to enable the structure to be unwound if the placing of the Issuer's shares does not proceed.

Placing and admission

The JerseyCo Subscriber places the shares to be issued by the Issuer with investors selected by the JerseyCo Subscriber (the **Investors**) and, upon listing of those shares:

- the JerseyCo Subscriber pays the subscription monies for the redeemable preference shares to JerseyCo and JerseyCo issues the redeemable preference shares to the JerseyCo Subscriber;
- the JerseyCo Subscriber transfers all of its holdings of shares in JerseyCo to the Issuer; and
- in return for the transfer of the shares in JerseyCo, the Issuer issues its shares directly to the Investors.

Payment of cash to the Issuer

As a result of the transfers of JerseyCo shares, JerseyCo becomes a wholly-owned subsidiary of the Issuer, holding funds equivalent to the net proceeds of the placing. These may be lent by JerseyCo to the Issuer, paid to the Issuer by way of redemption of the redeemable preference shares in JerseyCo, or distributed to the Issuer in a winding up of JerseyCo.

Sometimes JerseyCo may direct the JerseyCo Subscriber to pay the subscription monies for the redeemable preference shares directly to a bank account of the Issuer, with the Issuer holding the monies on bare trust for JerseyCo pending redemption of the redeemable preference shares. This saves JerseyCo from having to open its own bank account.

Some variations

Cash box structures used in connection with placings usually require only a single issue of shares by JerseyCo.

Where cash box structures are used in connection with rights issues, however, it is quite common for there to be more than one tranche of shares issued by JerseyCo, with a gap between them in order to allow for the adjustments required if any cheques for the rights issue shares are unpaid.

Under the usual cash box structure, subscription monies are paid by the Investors to the JerseyCo Subscriber and the JerseyCo Subscriber uses the funds to satisfy its undertaking to subscribe for the redeemable preference shares in JerseyCo. However, some cash box structures (in particular rights issues) may involve a paying agent which holds the funds on trust for the different persons interested in the funds through the various stages of the transaction.

Advantages of using Jersey companies

Jersey companies are suited for use in cash box structures for a number of corporate and tax reasons:

- Jersey companies can be incorporated within a short timescale.

- Jersey companies are typically incorporated on a bespoke basis and are not shelf companies; incorporating a bespoke company makes it easier to demonstrate that JerseyCo is a subsidiary of the Issuer with UK management and control from incorporation.
- Jersey companies can be managed and controlled in the UK whilst retaining their registers and registered offices in Jersey. There is no requirement for board or shareholder meetings to be held in Jersey or for there to be Jersey resident directors.
- A Jersey company can redeem shares from any source of funds, including share capital.
- Winding up solvent Jersey companies is a simple and quick procedure. It is not necessary to appoint a liquidator and the process can be completed within a matter of days.
- In relation to taxation:
  - as JerseyCo is managed and controlled in the UK, it would not be liable to Jersey income tax;
  - there is no capital gains or withholding tax in Jersey; and
  - no duty is payable on the issue or transfer of shares in a Jersey company. Transfers of shares are carried out on the register which is required to be maintained in Jersey and all transfers and share certificates can be executed and retained in Jersey, outside the UK.
- Jersey has an experienced professional infrastructure accustomed to managing the regulatory, technical and practical demands of the cash box structures.

Contacts

A list of contacts can be found here.