GUIDE

Listing Jersey holding companies on the Alternative Investment Market (AIM)

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Introduction

Jersey remains a favoured destination for the registration by foreign-domiciled trading businesses of holding vehicles which are to be listed on AIM (the Alternative Investment Market of the London Stock Exchange).

Key advantages of a Jersey company

Using a Jersey company as the vehicle for an AIM listing may enable a foreign trading group to access London's capital markets without becoming liable to UK tax (UK tax advice should be taken and followed in every case). Other key advantages of using a Jersey company are set out below:

- Jersey companies provide tax neutrality at the holding company level;
- Jersey companies do not have to make withholdings on account of tax when paying dividends;
- no stamp duty is payable on the transfer of shares in Jersey companies (this has been regarded as a significant benefit in some cases);
- Jersey companies law is based on English companies law, but tends to be more flexible (see 'Important differences between English and Jersey companies law' below);
- the Takeover Code applies to Jersey companies;
- shares in Jersey companies may be held and traded in uncertificated form;
- investors are familiar with Jersey as a well-regulated international finance centre;
- Jersey is in a convenient time zone with a business day that begins before Tokyo closes and continues well into New York trading time; and
- Jersey is geographically close to Europe but independent from the European Union.

Introducing a Jersey company to a corporate structure

There are three common scenarios:

- New holding company for existing business: incorporate a new Jersey company, and by way of a group re-organisation prior to listing (usually a share-for-share exchange or a scheme of arrangement), insert the Jersey company at the top of the existing group structure so that it becomes the new holding company of the business to be listed.
- Migrate an existing holding company to Jersey: it is possible in some cases to re-domicile a foreign holding company to Jersey, so that it continues in existence as a Jersey registered company.
- New business: if the initial shareholders know in advance of the desire to list (for example in the case of a special purpose acquisition company, or 'SPAC'), use a Jersey holding company from the outset.

Formation of a Jersey company

It is possible to establish a Jersey company on a same-day basis. We can assist in preparing articles of association which meet the requirements of the AIM listing rules and the CREST rules (where relevant).

Where the company needs to be formed very quickly it can be established with 'plain vanilla' Articles and the AIM/CREST compliant Articles can be adopted at a later date prior to listing.

It will be necessary to establish the company as a public rather than a private company. For a summary of the key differences between a Jersey public and private company please see our guide entitled 'Companies (Jersey) Law 1991: Public and private companies'.

Circulating the Admission Document

The Admission Document describing the shares in the Jersey company will usually qualify as a prospectus for Jersey purposes. The Jersey law governing the circulation of a prospectus will therefore apply to the Admission Document. This means, amongst other things, that:

- the company must be a public as opposed to a private company;
- the Registrar of Companies in Jersey (the **Jersey Registrar**) must have given its prior consent to the circulation of the Admission Document;
- the Admission Document must contain certain prescribed information and statements (see 'Content of the Admission Document' below); and
- a copy of the Admission Document, signed by or on behalf of all the directors of the company, together with a signed copy of any report included in, or attached to, the Admission Document must be delivered to the Jersey Registrar.

Application for the Jersey Registrar's consent is made to the Jersey Financial Services Commission (**JFSC**). The application process is straightforward and the JFSC's published timescale for reviewing the Admission Document and issuing the consent is five business days. In most cases the review is completed within that timescale so that the Jersey approval process does not impact on the timing of the admission to listing.

Content of the Admission Document

Under Jersey companies law the Admission Document must make certain disclosures and give certain investment warnings. These requirements are not generally regarded as onerous. The JFSC also has the discretion to consent to the circulation of an Admission Document where it does not comply fully with the content requirements provided that such non-compliance does not affect the substance of the Admission Document and is not calculated to mislead. In our experience, ensuring that an AIM Admission Document meets the content requirements and securing any necessary derogations from the JFSC is not likely to present any material difficulty.

Preliminary marketing of shares

A Jersey company may undertake a preliminary marketing of its shares using a draft Admission Document (ie a preliminary or pathfinder prospectus) before obtaining the Jersey Registrar's consent to its circulation (see 'Circulating the Admission Document' above) as long as the usual 'red herring' language appears on the face of the document. This will usually state that the 'red' does not constitute an offer or invitation to acquire shares in the Jersey company.

Important differences between English and Jersey companies law

The Jersey companies law is based on the provisions of the UK Companies Act 1985 (**CA 85**) and so there are many similarities between Jersey and English companies law (even though the CA 85 has been superseded by the UK Companies Act 2006) and Jersey and English companies have the same constitutional structure. Jersey companies law contains similar provisions with regard to general meetings, takeovers and schemes of arrangement. However, there are important differences between Jersey and English companies law which can be relevant when a Jersey company is seeking a listing on AIM. We are able to supply a summary of the key differences on request.

A number of notable amendments were made to Jersey companies law in 2008:

- public companies are able to dispense with the requirement to hold AGMs (although this would probably not be appropriate for a listed company);
- AGMs or meetings convened for the passing of a special resolution may be convened on 14 days' notice (rather than 21 days' notice);
- the rules on making distributions have been simplified;

- the financial assistance rules have been abolished;
- treasury shares have been introduced; and
- PLC moniker has been introduced.

In 2014 the rules prohibiting discounts and relating to commissions were abolished.

The Takeover Code

The Takeover Code applies to Jersey companies if any of their securities are admitted to trading on a regulated market or a multilateral trading facility in the UK or on any stock exchange in the Channel Islands or the Isle of Man. As AIM is a multilateral trading facility in the UK, the Takeover Code will apply to a Jersey company if its securities are admitted to trading on AIM (irrespective of where management and control of the company may take place).

The Takeover Code Offers investor protection, which is a desirable objective as far as many investors are concerned and can be an advantage in marketing a company's securities.

Jersey taxation

Jersey offers a relatively simple and favourable income tax regime. There are no capital gains, capital transfer or corporation taxes payable in Jersey and no stamp duty is payable in Jersey in respect of the transfer of shares in a Jersey company.

A Jersey company is either:

- treated as tax resident in Jersey but subject to a general zero rate of corporate tax (certain regulated businesses, banks and utility companies will however be taxed at 10 per cent or 20 per cent); or
- treated as not tax resident in Jersey (and therefore not subject to Jersey income tax) if it is centrally managed and controlled outside Jersey in a country or territory where the highest rate at which any company may be charged to tax on any part of its income is 10 per cent or higher, and the company is resident for tax purposes in that country or territory.

Companies incorporated to act as AIM listing vehicles should be subject to the general zero rate of corporate tax. A Jersey company does not have to make any withholdings or deductions from payments of dividends or interest on account of Jersey income tax and a person who is not resident in Jersey is not liable to Jersey income tax on dividends or interest paid by a Jersey company.

UK taxation

We believe that it should be possible to structure a Jersey AIM listed company so that it does not fall within the UK charge to tax as long as it is managed and controlled outside the UK. Tax advice should be sought from UK tax advisers in every case.

Uncertificated securities: CREST

Jersey companies listed on AIM can use the CREST system to hold and transfer their shares and other securities in electronic or paperless form. This is because Euroclear UK & Ireland Limited (formerly CRESTCo Limited) has been recognised as an overseas operator for the purposes of the Companies (Uncertificated Securities) (Jersey) Order 1999.

Administrative requirements

Under Jersey companies law, a Jersey company must maintain its registered office and a share register in Jersey. Given the volume of trading in the shares of a Jersey listed company, it will be necessary for the company to appoint a Jersey based share registrar. Well known companies providing full electronic registrar services in the UK have Jersey subsidiaries which are able to provide the same services to Jersey companies. It is our understanding that in order to avoid UK stamp duty being payable on the transfers of shares in a Jersey company with an AIM listing, the register of members of the company must be maintained in Jersey. Jersey based registrars are aware of this issue.

There is no Jersey law requirement for the company to appoint Jersey resident directors (unless it is a collective investment fund).

Collective investment funds

This guide focuses on the listing of shares in a Jersey holding company of a foreign trading group. Where the holding company may be a collective investment fund for Jersey purposes, advice on the Jersey law applicable to investment funds will be required. We would be pleased to provide this.

Contacts

A full list of contacts specialising in corporate law can be found here.