Convertible Bond issuances using a Jersey cash box structure

Briefing Summary: A Jersey cash box structure is a well-established financing tool for facilitating access by UK listed companies ("PLCs") to immediate funding by way of a convertible bond issue.

Service Area: Banking and Finance, Debt Capital Markets, Structured Finance and Securitisation, Corporate, Corporate Structuring, IPOs and Equity Capital Markets

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One of the main rationales for using a cash box structure is that equity securities issued by PLC are issued for a non-cash consideration so that the statutory pre-emption provisions set out in the UK Companies Act 2006 do not apply. The issue can therefore take place without the timing implications of seeking shareholder approval to disapply the pre-emption rights or conducting a pre-emptive issue.

This guidance note gives an overview of the features of a Jersey cash box structure as used in convertible bond transactions and sets out the main benefits of using a Jersey cash box company.

Carey Olsen's highly experienced structured finance team is well placed to assist with structuring a convertible bond issue using a Jersey cash box having acted on a vast number of such structures over many years.

Structuring a convertible bond issue using a Jersey cash box

A convertible bond issue can be structured in two ways:

1. PLC Issuer transaction (also known as a cash box convertible)

PLC incorporates a Jersey company which issues redeemable preference shares to a manager, typically an investment or commercial bank. The subscription amount for those preference shares is calculated by reference to the proceeds of the issue by PLC of convertible bonds. The manager transfers the preference shares to PLC in consideration for the issue by PLC of convertible bonds to investors identified by the manager. Such convertible bonds are therefore issued by PLC for a non-cash consideration. Typically, once the preference shares are held by PLC, PLC redeems them and receives the proceeds of that redemption, being the amount paid up on those shares.

Key Contacts

Simon Marks
PARTNER, JERSEY
+44 (0)1534 822252
EMAIL SIMON

Matthew Ecobichon
PARTNER, JERSEY
+44 (0)1534 822299
EMAIL MATTHEW

Ashley Morrison
COUNSEL, JERSEY
+44 (0)1534 822272
EMAIL ASHLEY

2. Jersey Issuer transaction (also known as an exchangeable redeemable preference shares ("ERPS") structure)

PLC incorporates a Jersey company which issues convertible bonds to investors. These bonds are convertible into redeemable preference shares in the Jersey issuer which, upon conversion, are automatically exchanged for securities in PLC (usually ordinary shares). Such securities are therefore issued by PLC for a non-cash consideration. The proceeds of the convertible bond issue are typically loaned to PLC.

In our experience the Jersey Issuer transaction is the most common Jersey cash box structure for issuing convertible bonds. Therefore, the remainder of this guidance note will focus on that structure. For further information on PLC Issuer transactions, please see our guidance note: Jersey Cash Box Structures.

How does a Jersey Issuer transaction work?

- PLC incorporates a Jersey company subsidiary ("**JerseyCo**") which is usually managed and controlled in the UK and resident in the UK for tax purposes.
- JerseyCo issues convertible bonds which are guaranteed by PLC to investors identified by one or more managers.
- The proceeds of the bond issue are received by JerseyCo and are then usually lent to PLC by way of an intercompany loan (the "**Loan**"). The Loan pays a rate of interest to JerseyCo sufficient to allow JerseyCo to service its obligations under the bonds.
- When conversion rights are exercised, the bonds convert into redeemable preference shares in JerseyCo which, upon issue to the converting bondholder, are automatically exchanged for securities in PLC.
- Once bonds have been converted, PLC may redeem the preference shares it holds in JerseyCo (usually setting off the amount payable by JerseyCo in respect of the redemption against PLC's corresponding obligations in respect of the Loan).
- Once all of the bonds have been converted (or upon maturity, if earlier) JerseyCo can be wound up if it is no longer required.

Regulatory consents

Regulatory consents will typically need to be obtained in Jersey in connection with the issue of the convertible bonds. The consent process is straightforward and we can obtain consents on an expedited basis, where necessary, to ensure that even the most accelerated transaction timetables can be met.

Listing on The International Stock Exchange ("**TISE**")

Convertible bonds are regularly listed on a recognised stock exchange so that the bonds qualify for the Quoted Eurobond Exemption (meaning interest can be paid on the bonds without UK withholding tax). Her Majesty's Revenue and Customs ("**HMRC**") deems TISE as a recognised stock exchange and TISE has become an increasingly popular choice for listing convertible bonds. This is because of the low cost, speed, ease and flexibility of the listing process offered by TISE. We have listed numerous convertible bonds on TISE and can assist PLC with achieving a listing on TISE through our listing agent, Carey Olsen Corporate Finance Limited. This means that there is one Carey Olsen point of contact for the legal and listing work, resulting in a streamlined process for PLC.

What are the benefits of using a Jersey cash box company?

Speed, flexibility and convenience:

- Subject to completion of the necessary "know your client" requirements, JerseyCo can be incorporated on a "same day" basis if necessary.
- The redemption of the JerseyCo preference shares is a quick and simple process under Jersey companies law. JerseyCo can redeem the preference shares from any source of funds, including share capital, provided such shares are fully paid and the directors authorising the redemption make the requisite statutory solvency statement. Alternatively, the funds can be quickly extracted from JerseyCo in other ways, such as by dividend or on a winding up.
- The solvent winding up process under Jersey companies law is straightforward and quick. It is not necessary to appoint a liquidator, which keeps costs to a minimum.
- The articles of association of JerseyCo can be drafted to allow for the typical structure to be tailored to achieve more bespoke commercial objectives.

Jersey legal, administrative and regulatory framework:

- Jersey companies law is based on English law principles, allowing a consistent approach to be taken across both jurisdictions.
- There is no requirement under Jersey law for Jersey resident directors. This allows PLC to appoint UK resident directors to the board of JerseyCo. Board meetings can also be held outside Jersey.
- The professional corporate services providers that we work with are experienced and knowledgeable in all aspects of Jersey cash box structures which ensures a seamless process from PLC's perspective.
- Jersey is within the same time zone as, and is close to, the UK, meaning that Carey Olsen is able to provide a fast and efficient service in line with the most aggressive transaction timetables.
- The regulatory consent process is straightforward and consents can be obtained on an expedited basis if required in order to meet accelerated transaction timetables.

Taxation:

- JerseyCo will usually be centrally managed and controlled and tax resident in the UK, in which case it will be treated as not resident in Jersey for tax purposes. The structure is therefore tax neutral from a Jersey perspective.
- Jersey's economic substance requirements do not apply to companies that are treated as not resident in Jersey for tax purposes.
- There is no capital gains tax, corporation tax, stamp duty, VAT or withholding tax payable in Jersey in respect of the issue, transfer or redemption of the preference shares in JerseyCo.
- JerseyCo's register of members is kept in Jersey at all times and share transfers are effected by executing the stock transfer forms in Jersey. This means that no UK stamp duty liability should arise on the transfer of the JerseyCo preference shares.

For further information or professional advice please contact our lawyers on the right hand side of this page.

Carey Olsen Jersey LLP is registered as a limited liability partnership in Jersey with registered number 80.