CAREY OLSEN

Guernsey cash box structures

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The unprecedented effects of coronavirus (COVID-19) are causing severe pressures on the cash flow of many trading companies as restrictions on travel and businesses continue, and they face the prospect of government support measures coming to an end. This is causing listed companies to consider alternative ways of raising capital on an urgent basis, resulting in a resurgence in the popularity of cash box structures. This note sets out a summary of cash box transactions and the benefits of using a Guernsey cash box company.

The main advantage of the cash box structure is that shares issued by the relevant UK public company ('Plc') (whether immediately, or upon conversion of bonds) are issued for a non-cash consideration so that the statutory pre-emption provisions set out in the UK's Companies Act 2006 do not apply. The share issue can therefore take place without the timing and other implications of seeking shareholder approval to disapply the pre-emption rights or conducting a rights issue.

This note sets out a summary of cash box transactions and the benefits of using a Guernsey cash box company.

How is a cash box transaction structured?

There are two principal structures used in relation to cash box transactions. These are described below in the context of using a cash box company incorporated in Guernsey.

Plc issuer transaction

A Guernsey company ('GuernseyCo') is incorporated which is managed and controlled in the UK and resident in the UK for tax purposes.
GuernseyCo typically issues redeemable shares to a manager, being an investment or commercial bank ('Manager').

Ordinary shares in GuernseyCo may be held by Plc and if merger relief is to be utilised, the Manager also subscribes for a small number of such ordinary shares.

The Manager transfers its redeemable shares to Plc in consideration for the issue by Plc of placing shares or convertible bonds, as the case may be, to investors identified by the Manager. The placing shares or convertible bonds are therefore issued by Plc for a non-cash consideration.

Plc redeems the GuernseyCo shares and receives the proceeds of this redemption. GuernseyCo is then wound up.

In some circumstances GuernseyCo lends the subscription proceeds to Plc for a period of time prior to the redemption.

Guernsey issuer transaction

A GuernseyCo is incorporated as above.

GuernseyCo issues convertible bonds to investors. There is no private/public company distinction in Guernsey and so no additional company law requirements apply where a Guernsey company wishes to issue securities to the public. The bonds issued are convertible into redeemable shares in GuernseyCo which, upon conversion, are automatically exchanged for ordinary shares in Plc.

The proceeds of the bond issue are usually lent by GuernseyCo to Plc, which pays a rate of interest to GuernseyCo sufficient to allow GuernseyCo to service its obligations under the bonds.

Once all bonds have been converted (or upon maturity, if earlier), Plc redeems the shares it holds in GuernseyCo and GuernseyCo is wound up.

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

Speed, flexibility and convenience

Subject to completion of the necessary KYC requirements, GuernseyCo can be incorporated within 24 hours or, if necessary and on payment of an additional fee, within either 15 minutes or two hours.

The redemption of the GuernseyCo shares is a quick and simple process under Guernsey company law. Alternatively, the funds can be quickly extracted in other ways if preferred, such as by dividend or on a winding up.

Guernsey legal and regulatory framework

Guernsey companies law is based on English law principles, allowing a consistent approach to be taken across both jurisdictions. However, Guernsey companies law provides additional flexibility in a number of areas.

Guernsey is within the same time zone as and is close to the UK, meaning that Guernsey firms are able to provide a fast and efficient service in line with the most aggressive timetable.

No Guernsey regulatory consents are needed in relation to the issue of shares by Guernsey companies.

Taxation

There is no capital gains tax, corporation tax, stamp duty, VAT or withholding tax payable in Guernsey in respect of the issue, transfer or redemption of the shares in the GuernseyCo.

GuernseyCo's register of members is kept in Guernsey at all times and, in the case of a Plc Issuer transaction, the share transfer forms in respect of the transfer of shares in GuernseyCo from the Manager to Plc are executed in Guernsey. This means that no UK stamp duty liability should arise on the transfer of the GuernseyCo shares.

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FIND US

Carey Olsen (Guernsey) LLP
PO Box 98
Carey House
Les Banques
St Peter Port
Guernsey GY1 4BZ
Channel Islands

T +44 (0)1481 727272
E guernsey@careyolsen.com

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