Jersey cash box structures

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The economic impact of the COVID-19 pandemic has resulted in liquidity and cash flow challenges for many companies. As a consequence, companies may have to consider alternative ways to raise capital on an urgent basis.

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 share or convertible bond issue.

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.

As a result of temporary guidance issued by the Pre-Emption Group of the UK's Financial Reporting Council in relation to its expectations for issuances in the current circumstances, cash box structures may emerge as an attractive financing tool for an increasing number of PLCs.

This guidance note gives an overview of the features of a Jersey cash box transaction as used in a direct share or convertible bond issue by PLC. For further information on structuring a convertible bond issue using a Jersey cash box company as the convertible bond issuer (also known as an exchangeable redeemable preference shares (ERPS) structure), please see our guidance note: Convertible Bond issuances using a Jersey cash box structure.

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

How does a cash box transaction work?

- PLC incorporates a Jersey private company ("JerseyCo") which is usually managed and controlled in the UK and resident in the UK for tax purposes.
- JerseyCo typically issues redeemable preference shares to a manager, being an investment or commercial bank ("Manager"). The subscription amount for those preference shares is calculated by reference to the proceeds of the issue by PLC of shares or convertible bonds. The ordinary shares in JerseyCo are 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 preference shares to PLC in consideration for the issue by PLC of shares or convertible bonds, as the case may be, to investors identified by the Manager. The shares or convertible bonds are therefore issued by PLC for a non-cash consideration. Convertible bonds are converted into securities of PLC in accordance with their terms.
- PLC redeems the preference shares it holds in JerseyCo and receives the proceeds of this redemption, being the amount paid up on those shares. JerseyCo can then be wound up if it is no longer required.
- In some circumstances JerseyCo lends the subscription amount it receives from the Manager for the redeemable preference share issue to PLC for a period of time prior to the redemption. The rate of interest payable to JerseyCo is usually sufficient to allow JerseyCo to meet its dividend obligations in respect of the redeemable preference shares.

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.

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.
- 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.
- 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.
- No Jersey regulatory consents are required, except to issue shares in JerseyCo. That consent is obtained upon incorporation of JerseyCo so does not impact the transaction timetable.

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 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 shares.

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