

## Migrations by UK corporates

Service area / [Corporate](#)

Location / [Jersey](#)

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It has been widely reported in the UK press that a number of UK corporates with significant non-UK business interests have considered migrating for tax purposes to Ireland, Switzerland or other lower taxation jurisdictions in an effort to combat what they perceive to be an onerous UK corporate tax regime. A number of such migrations have been completed using new Jersey holding companies, including Shire, Henderson, and Wolseley.

The Henderson migration received particular interest in the press at the time, as it was the first financial services business to make such a move. Wolseley, a FTSE 100 company, is a more recent migration. Carey Olsen advised Henderson and Wolseley on the Jersey aspects of their migrations. This note discusses the Jersey perspective in respect of these migrations, in particular why Jersey is proving to be the jurisdiction of choice for the new holding company in such structures, to assist UK corporates and their advisers who are considering a similar move.

If you have any queries, we would be pleased to assist.

### Why choose Jersey?

There are a number of reasons why Jersey is proving popular as the place of incorporation of the new holding company:

- **Jurisdictional reputation.** Jersey is widely recognised as one of the world's leading offshore centres and enjoys a reputation as a well regulated and politically and economically stable jurisdiction with a highly regarded local regulator (the Jersey Financial Services Commission) and professional infrastructure that can offer the highest quality legal and other advice to those using Jersey. Jersey was included in the "white list", along with jurisdictions such as

the US and UK, in a recent OECD report. Jersey was also praised by the recent Foot report, commissioned by the UK government, for its regulatory and financial prudence. A 2008 report by the International Monetary Fund has listed Jersey as the best for meeting financial practices out of 120 territories assessed.

- **Tax neutrality.** Following the introduction of the "zero/10" tax regime in Jersey (which replaced the previous "exempt company" regime) the corporate tax rate for almost all types of businesses is nil. In addition, no stamp duty is payable in Jersey on issues or transfers of shares.
- **Geographic proximity.** Jersey is geographically close to the UK markets.
- **Corporate law flexibility.** Jersey corporate law is modelled on English law and accordingly UK corporates and their advisers can readily understand the implications of using a Jersey company. In addition, Jersey corporate law incorporates a number of innovations which provide greater flexibility to corporates, including no financial assistance regime for public companies and very flexible distribution rules (see further below)
- **Code application.** As a company listed on the main board of the London Stock Exchange, the City Code on Takeovers and Mergers will continue to apply to the group notwithstanding that it is now a Jersey holding company.
- **CREST.** Jersey has uncertificated securities regulations which enable the electronic holding/trading of shares of a Jersey company in/ through CREST. Accordingly, it is not necessary to set up depositary receipt or branch register type arrangements as it is in most other offshore jurisdictions. However, if ADI or other such interests exist, these can be replicated by the Jersey company.

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- **Jersey Court System.** The procedure of the Jersey Court is modelled on the Rules of the English High Court. The Court of Appeal consists for most part of distinguished UK lawyers. The Judicial Committee of the Privy Council in London is the ultimate court of appeal.

## Jersey corporate law

As noted above, Jersey corporate law is modelled on English law and accordingly UK corporates and their advisers can readily understand the implications of using a Jersey company. Jersey corporate law offers greater flexibility and practicality in some respects. Some features are:

- **Directors duties:** Jersey corporate law contains a statement of directors duties, to act honestly and in good faith with a view to the best interests of the company, and to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances (the more extended list of directors duties now provided under the Companies Act 2006 is not replicated in Jersey law). Jersey also has market abuse and insider dealing provisions which are modelled on English law.
- **Distributions:** Jersey corporate law permits dividends and other distributions out of any source, including capital as well as profits, subject only to the directors who authorise the distribution making a statement that they are of the opinion that the prescribed solvency test (effectively a 12 month cash flow solvency test) is met. The only exception is that a par value company cannot deduct the payment from its nominal share capital account (but can deduct it from its share premium account). However, the company could be set up as a no par value company (meaning shares do not have a nominal value) which would avoid this restriction.
- **Redemptions/purchases of shares:** Jersey corporate law permits redemptions and purchases of own shares out of any source, including capital as well as profits, subject to the prescribed solvency test (which is similar to the test for distributions).
- **Financial assistance:** The previous restrictions on the giving of financial assistance in connection with an acquisition of shares have been abolished, both for public and private companies.
- **Treasury shares:** Jersey corporate law permits a company to hold its own shares in treasury. There is no restriction on the amount of shares which can be held in treasury (unless the articles of association contain a restriction), except that not all can be.
- **Takeover related provisions:** Jersey corporate law contains scheme of arrangement provisions as well as “squeeze out” provisions which are essentially identical to their UK equivalents. In practice, the court timetable in Jersey in respect of schemes of arrangement tends to be shorter than in England. In addition, if the company wishes to take advantage of this, Jersey has a merger regime which could be applied in certain recommended offer situations, with a lower threshold to achieve 100% control, than is traditionally required in relation to a tender offer or scheme.
- **Pre-emption rights:** Jersey corporate law does not contain pre-emption rights in favour of shareholders in relation to issues of shares. Neither does Jersey corporate law have any equivalent of section 55 of the Companies Act 2006. However, in the case of main board listed companies, in practice such rights are included in the articles of association of the Jersey company to provide investors with UK equivalent protection.
- **Prospectus rules:** Jersey has its own prospectus rules, but in practice these do not tend to require disclosure of any information in addition to that which would be required in a UK/Prospectus Directive compliant prospectus. The process for obtaining approval of a prospectus is simple and quick in Jersey, and in our experience it does not impact on the wider timetable.
- **Disclosure regime:** Jersey corporate law does not have a regime for disclosure of share interests in publicly listed companies, but in practice for main board listed companies the articles of association will incorporate rules equivalent to the relevant provisions of the Disclosure and Transparency Rules.
- **Special resolutions:** Under Jersey corporate law, these require a two thirds majority (not 75% majority as under English law). However, Jersey law permits companies to increase the threshold, so it can be set at 75% to replicate English law, if desired.

## Why choose Carey Olsen?

Carey Olsen is a market leading offshore law firm. We deliver exceptional services to our clients from the key offshore financial centres of the British Virgin Islands, the Cayman Islands, Guernsey and Jersey. We also have an established presence in Cape Town and the City of London.

We’re consistently the firm of choice for our clients and for advisers who refer work to our jurisdictions.

Whether you’re restructuring, listing on a new market or making an acquisition or a disposal, we have the expertise to support you. At Carey Olsen, corporate and commercial work is a cornerstone of our legal service offering.

Our lawyers are as skilled at creating new structures for commercial growth as they are advising troubled boards or aggrieved shareholders.

We act for an impressive range of international organisations and represent more LSE-listed clients than any other offshore law firm (Morningstar Professional Services Rankings Guide Q4 2012). We’ll work in partnership with onshore advisers on large-scale global projects and directly for local businesses within each of our jurisdictions.

With one of the largest offshore corporate and commercial offerings, Carey Olsen is able to scale the size of the team to your project; matching the level of expert resource needed to meet your deadlines and expectations.

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Our understanding comes from experience: advising on the most complex and ground-breaking corporate and commercial transactions. Our sound legal advice and expertise gives you the commercial agility that we know you need to operate effectively. Client focus is, and always will be, our core aim.



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