

## **A MOORE STEPHENS GUIDE TO USING JERSEY CORPORATE STRUCTURES FOR UK PUBLIC TAKEOVERS AND PRIVATE ACQUISITIONS**

### **Introduction**

There has been an increasing level of interest in using Jersey corporate holding structures for UK public takeover offers and private acquisitions. The principal advantage of using a Jersey holding company is the flexibility of Jersey company law in relation to returns to investors - whether by means of dividend, redemption of share capital or share buy-back. Although generally more flexible, Jersey company law is modelled on UK company law principles.

### **Jersey Tax Regime**

Jersey has a general zero rate of income tax for virtually all companies and, unless it is managed and controlled in a jurisdiction outside Jersey (see below), any company incorporated after 3 June 2008, is subject to a zero rate.

Alternatively, Jersey companies may be exclusively tax resident in jurisdictions outside Jersey provided that:

- It is centrally managed and controlled in another jurisdiction outside Jersey;
- It is tax resident in that other jurisdiction; and
- The highest rate of corporation tax in that other jurisdiction is 20% or above.

Accordingly, UK managed and controlled Jersey companies should not be treated as "dual resident investing companies" for the purposes of s.404 of ICTA 1988.

There is no stamp duty payable on the transfer of shares in a Jersey company, and there is no corporation or capital gains tax in Jersey. The Island also does not levy annual taxes or charges by reference to a company's authorised or issued share capital. Although there is a goods and services tax at a rate of 3%, companies beneficially owned outside Jersey, which do not supply goods or services in Jersey, will generally qualify for "international service entity" status - effectively bringing them outside the scope of the goods and services tax regime provided that a fee of £100 is paid each year.

### **Returns to Investors**

It is possible to structure returns to investors by way of capital returns or cash distributions (or a combination of the two). Jersey company law is very flexible on the sources of funding for redemption of share capital and in relation to requirements for distributions.

### **Redemption And Buy Back Of Shares**

Monies payable on the redemption of redeemable shares or on the buy back of shares by a Jersey company may be funded from any source, including capital. Previously, in the case of a par value company, the sources available to fund such payments were limited, in general terms, to distributable profits or the proceeds of a fresh issue of shares (although, where such payment included a premium element in excess of the nominal value, the share premium account could also be used). Similar restrictions applied in the case of a no par value company, although a stated capital account could also be used.

The directors responsible for authorising the redemption or buy back payment will be required to make a statement that they have formed the opinion that:

- immediately following the date on which the payment is to be made, the company will be able to discharge its liabilities as they fall due; and

- having regard to the prospects of the company and their intentions with respect to the management of the company's business and the amount and character of the financial resources that will, in their view, be available to the company, the company will be able to continue to carry on business and discharge its liabilities as they fall due for a period of 12 months after the date of such payment (or, if sooner, a solvent winding up of the company).

### ***Distributions***

A Jersey company is now permitted to make a distribution from any source, not merely from distributable profits. Therefore, distributions may be made from capital without a need to obtain Court approval for a reduction of capital, as was previously the case.

A distribution may be debited from any account of the company (including the share premium account and the stated capital account) other than the capital redemption reserve or the nominal capital account. The fact that distributions may be made from the stated capital account of a no par value company but not the nominal share capital of a par value company, may lead to an increased use of no par value companies in the future.

A distribution may only be made if the directors authorising the distribution make a solvency statement in the form referred to above.

### **Financial Assistance**

Jersey company law historically prohibited a company giving financial assistance in respect of the acquisition of its own shares. The prohibition has now been removed and the amendments make clear that any previous common law prohibition on financial assistance is not renewed by virtue of the removal of the statutory prohibition.

### **Debt Listing**

A public offer often involves the issue of loan notes in connection with the acquisition financing. The Channel Islands Stock Exchange ("CISX") was designated by the UK Inland Revenue as a recognised stock exchange under Section 841 of the UK Income and Corporation Taxes Act 1988 in 2002. This designation means that qualified debt securities listed on the CISX are eligible for the "Quoted Eurobond Exemption" which allows an issuer within the UK tax net to make payments of interest on the listed securities gross without deduction for tax.

### **Exit by Initial Public Offering**

Jersey incorporated companies are increasingly being used for listing's, i.e. on the Alternative Investment Market of the London Stock Exchange and also on the main London Stock Exchange.

### **Why use Jersey?**

Whilst not exhaustive, reasons for using Jersey include:

- Jersey is a leader among the offshore jurisdictions and has a top-tier reputation;
- As one of the largest offshore jurisdictions, Jersey has the legal, accounting and administrative depth and expertise to facilitate complex transactions;
- Jersey companies law is based on English companies law but tends to be more flexible;
- Fast track incorporation of companies (same day if required);
- Jersey's close proximity to, and same time zone as, London makes closing transactions a simpler process;
- An extremely favourable corporate tax regime and no stamp duty on transfer of shares in Jersey companies.

### **Why Moore Stephens Jersey?**

Over the years, we have developed considerable expertise in incorporating and administering Jersey corporate holding structures.

We understand the importance of ensuring the offshore entity is diligently managed and controlled from Jersey whilst ensuring our clients' requirements are respected.

### **Services Provided**

Working closely with our clients and their professional advisors, we provide bespoke and comprehensive offshore corporate services, including the establishment and ongoing administration and accounting of appropriate vehicles, dependent on the clients' requirements and the complexity of their affairs.

We also provide bespoke banking intermediary administration services through our in-house banking specialists.

Moore Stephens has an extensive network and is able to incorporate corporate structures in those jurisdictions.

***Moore Stephens Jersey is part of Moore Stephens International, which is regarded as one of the world's major accounting and consulting networks consisting of 351 independent firms with 630 representative offices and some 21,000 people across 98 countries.***

This information sheet provides a brief outline only and is not comprehensive as such and should you require further specific advice, please contact Kathy Gillen or Adrian Moll

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