

Listing Asian Businesses in Hong Kong or London Using a Jersey Holding Company

Introduction - Asia

Asia is a vast and growing market, with the Chinese economy being the biggest. China has effectively become the second largest economy in the world after that of the US and is expected to overtake them within the next ten years. There is a significant amount of capital being generated in Asia which is ripe for investment.

A stock exchange listing provides a gateway to the significant and growing Asian capital markets and utilising a Jersey company as the listed vehicle to facilitate access to such markets makes use of a respected, recognised (both by the markets and investors) and tax neutral corporate structure.

This briefing looks in further detail, amongst other things, at why Jersey companies have proved so popular with businesses and their investors, and why it is likely that, as the Asian economies continue to surge forward and the global economy recovers, we will see the number of initial public offerings ("IPOs") increase and in particular why we expect to see more Asian businesses choosing a Jersey holding company as their preferred vehicle for a stock exchange listing. We may also see some London listed companies transfer their listing to Hong Kong following the lead of Jersey incorporated China cement giant, West China Cement, in August 2010

This briefing focuses on listings on London's stock exchanges and the Hong Kong Stock Exchange. However, Jersey companies are acceptable to the vast majority of the world's leading stock exchanges and investors globally and so the advantages highlighted in this briefing will be equally applicable when considering listings on other exchanges.

Why Choose a Jersey Company?

The principal reason to use a Jersey company is to gain a benefit or benefits which will ultimately make the IPO most attractive to as many investors as possible and generally put the company and its business in the best long term position to grow and develop.

Jersey companies are listed around the world on various markets and come from a wide variety of sectors, including metals, oil and gas, mining, pharmaceuticals, media, real estate, support services, constructions and materials, finance and investment.

Their businesses are typically international and their names are often well known such as Randgold Resources Limited, Shire Plc, Experian Plc, Petrofac Limited, WPP Plc, Regus Plc (all listed in London) and United Company RUSAL Plc ("Rusal") which is listed in Hong Kong.

One quarter of the 80 plus Chinese companies currently listed on one of London's stock exchanges are incorporated in Jersey.

Set out below are some of the specific reasons which make a Jersey incorporated company attractive to both investors and the company itself.

Jersey's Reputation

Jersey has long enjoyed an outstanding international reputation offering investors the comfort of recognised reliability, substance and appropriate regulation.

Jersey has for many years been subject to the OECD convention and therefore an OECD territory issuer. In April 2009, Jersey was designated from the outset by the OECD as a "white listed" jurisdiction meeting agreed international tax standards for information exchange and co-operation.

In addition, Jersey received one of the most favourable reports of all jurisdictions when the IMF published its report in September 2009 on Jersey's anti-money laundering and countering of financial terrorism regime.

The IMF report showed that Jersey complies with all of the core principles for effective banking supervision and complies with 44 of the 49 general FATF recommendations (the highest ever recorded by the IMF and compared with, for example, 36 for the UK and 33 for Switzerland).

Couple this standard of excellence with years of stability from an economic, political and financial point of view, and the presence of highly experienced professionals in Jersey within a finance industry representing some fourteen percent of Jersey's population, and it is easy to see why Jersey has earned and retained its global reputation as a first class international finance centre with a proven track record for attracting investment from around the world.

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Tax Environment

Many businesses with an international reach can derive a real advantage from their holding company being incorporated and, where appropriate, managed and controlled in a tax neutral jurisdiction such as Jersey. As a consequence, investors in such Jersey holding companies will gain a similar advantage.

In Jersey:

- There is no corporation tax, capital gains tax or capital transfer tax;
- There is no requirement for a Jersey company to make any withholding or deduction on account of Jersey tax in respect of dividend or interest payments; and
- No stamp duty or similar taxes are payable on the issue or transfer of a Jersey company's shares (although note that another jurisdiction may apply their own stamp duty when trading listed shares - for instance, Hong Kong stamp duty may be payable on a transfer of shares in a Jersey company if the shares are registered on an overseas branch register kept in Hong Kong).

In terms of income tax, the general rate of Jersey corporate income tax payable by companies that are tax resident in Jersey is zero per cent. Moreover, a Jersey company may elect not to be resident for tax purposes in Jersey - and so exclusively tax resident elsewhere - if:

- Its business is managed and controlled in a jurisdiction other than Jersey;
- It is tax resident in that jurisdiction; and
- The highest rate of corporate income tax in that jurisdiction is 20% or higher.

Consequently, companies formed as listing vehicles can expect to pay no income tax in Jersey, irrespective of whether or not they are tax resident in Jersey.

Corporate Laws

As well as offering a potentially extremely favourable tax environment, Jersey's corporate laws also appeal to businesses and investors alike. This is principally because:

- **They are familiar:** Jersey's principal corporate statute, the Companies (Jersey) Law 1991 (as amended) (the "Companies Law"), is to a large extent modelled on, and uses many of the same concepts as, previous English Companies Acts which were the basis for the laws for the Hong Kong Companies Ordinance. A Jersey company's constitution is therefore very similar to that of a Hong Kong or English company and the overall form and content of its memorandum and articles of association will therefore be familiar to investors in

Hong Kong or London and will typically provide equivalent rights and protections; and

- **They are flexible:** the Companies Law, whilst robust, offers a degree of flexibility not afforded by Hong Kong or English law in certain key aspects. The flexibility of the Companies Law allows any necessary changes to be made to the constitutional documents of a Jersey company to accommodate investor expectations and/or to satisfy the listing rules of a particular stock exchange.

Some examples of this familiarity and flexibility are considered below:

- **Pre-emption Rights:** HKSE investors will be familiar with the lack of statutory pre-emption rights under Jersey law for existing shareholders to be offered shares before new investors as the position is the same under Hong Kong law. For a London listing pre-emption rights on the issue of shares are often included in the articles of a Jersey listing vehicle in order to enhance investor protection.
- **Disclosure of interests in shares:** there are no statutory disclosure and transparency provisions under Jersey law requiring shareholders to disclose interests in shares but, under Hong Kong's Securities and Futures Ordinance, substantial shareholders are required to disclose interests in shares of Hong Kong listed companies. For listings in London, it is commonplace to build provisions into the Jersey company's articles to reflect the disclosure requirements of the relevant stock exchange.
- **Takeover Codes:** Hong Kong's Codes on Takeovers and Mergers and Share Repurchases applies to takeovers, mergers and share repurchases affecting public companies in Hong Kong and companies with a primary listing of their equity securities in Hong Kong. Hong Kong's Takeover Code is generally modelled on the UK City Code on Takeovers and Mergers which applies to Jersey companies that are listed on London's Main Market and to other Jersey public companies that are centrally managed and controlled in Jersey. For those Asian businesses using a Jersey holding company to list in London and to which the Takeover Code (or a similar code) does not apply to that holding company, it is usual (and arguably best practice in order to provide investors with comfort) to include provisions in the articles prohibiting or restricting the acquisition of shares in the circumstances envisaged by the UK Code and giving the directors wide powers (commensurate to the extent possible with those vested in the Takeover Panel) to deal with a breach of any such prohibition or restriction.
- **Repurchase of Shares:** A business using a Jersey holding company may repurchase its shares from any source provided that a cash-flow solvency test is met. For a London listing, this gives Jersey listed companies an edge over their English counterparts in circumstances where the procedure allowing a company to purchase its own shares out of capital is only available to private companies. However, for

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Hong Kong listings, the HKSE presently requires Hong Kong listed companies to be subject to the section of the Hong Kong Companies Ordinance where purchases may only be made out of distributable profits, proceeds from fresh issues of shares etc and therefore it is recommended that the articles of the listing company include appropriate wording to that effect.

- **Distributions:** A business using a Jersey holding company can make a distribution from that Jersey holding company out of any source other than the nominal capital account or capital redemption reserve, provided that the company is able to carry on its business and discharge its liabilities as they fall due for 12 months after the distribution. The ability for Jersey companies to distribute from a wide range of sources in this way may be an advantage over other companies seeking to maintain a consistent dividend policy, including Hong Kong and English public companies which need to have qualifying profits and satisfy additional capital maintenance requirements in order to make a distribution.
- **PLC:** Jersey companies can use "PLC" in their name (unlike many other jurisdictions).

Introduction of Jersey Holding Company

A Jersey holding company can be introduced into a group structure in a number of different ways. These include the following.

New Businesses

We are often approached by entrepreneurs who are setting up a business that they intend to float in the months or years to come. In these cases, we are able to incorporate a Jersey company from the word go and, working with the client's tax advisers, put in place the most effective structure from the outset to meet the client's needs.

Existing Businesses

We are just as frequently asked to work with existing businesses that wish to introduce a Jersey holding company into their current group structure. In these cases, we incorporate the new Jersey company and then reorganise the existing group companies so that the Jersey company is placed at the top of the structure. This can be done in a number of ways, although a simple share for share exchange or a court approved scheme of arrangement are probably the most common, depending on the circumstances.

Migration or Merger

If the laws of the existing country of incorporation permit, an existing foreign holding company may migrate to Jersey. In doing so, it ceases to be incorporated in its original country of incorporation and instead continues in existence as a registered Jersey company. Similarly, new provisions to be introduced into Jersey company law

during 2010 are expected to allow a foreign holding company to merge with, and continue as, a Jersey company.

The migration and merger routes may be used when using a Jersey holding company will provide the added benefits which have already been identified above to both the company and investors alike.

By doing this it may be possible to achieve results which may not be possible, or may be less attractive, using the existing holding company or the introduction of a new holding company into the group structure.

Forming and Maintaining the Holding Company

Incorporating a new Jersey holding company is straightforward and can be done on a same day basis.

Once incorporated, the company must maintain its registered office and register of members in Jersey (although an overseas branch register may be maintained in any jurisdiction) but is not required to have Jersey-resident directors. Ogier frequently handles the incorporation process for its clients and can also provide registered office and company secretarial services on an ongoing basis.

We are the only firm to be able to provide Jersey legal and administrative services in the Asian time zone through our office in Hong Kong.

In addition, electronic registrar services can be provided locally in Jersey to support the volume of trading in shares of a listed company. Jersey law specifically permits securities to be uncertificated and a Jersey company's shares are capable of being held in dematerialised form. This is an advantage over other jurisdictions which can only trade shares on certain stock exchanges through the use of global depository receipts. In London, traded shares are cleared in the CREST system.

For a Hong Kong listing, a branch register is established in Hong Kong and to provide greater ease in trading, shares listed on the HKSE are typically issued in the name of HKSCC Nominees Limited, a wholly-owned subsidiary of HKSCC (the Hong Kong Securities Clearing Company Limited) which operates CCASS (the Central Clearing and Settlement System) in Hong Kong. Brokers are provided with stock accounts through which they can trade shares.

Marketing the Company's Shares

In terms of marketing, the shares in a Jersey holding company will generally be capable of being marketed freely from a Jersey law perspective. One point to note is that the offer/admission document that is sent to prospective investors may amount to a prospectus for Jersey law purposes, and certain basic steps need to be

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taken as a result. However, these are not considered onerous particularly when Jersey approvals will generally be given concurrently with and on the same basis as other formal approvals which may also be required in certain markets where the shares may be sold.

There are other marketing considerations which may have an impact on how one structures a listed holding company. For example, some investors, particularly those in Europe and North America, require shares or securities to be issued by an issuer which is appropriately recognised or regulated (e.g. an OECD territory issuer). Some require any investment to be held as shares rather than depositary receipts - Jersey companies can do both. Thus, with its high standards and wide recognition, Jersey as a jurisdiction can normally provide that crucial advantage to a successful offering.

Listing on London's Stock Exchanges

Jersey companies are eligible to form part of the coveted FTSE 100 classification. It is interesting to note that all of the non-UK FTSE 100 companies are Jersey incorporated companies.

London's main board has 6 PRC companies listed, one of which is incorporated in Jersey. AIM includes over 50 PRC companies, of which approximately 20% are incorporated in Jersey.

Listing on the Hong Kong Stock Exchanges

Jersey was approved as an Acceptable Overseas Jurisdiction by the Hong Kong Stock Exchange in October 2009. Jersey companies can therefore join companies from Australia, Bermuda, British Columbia, British Virgin Islands, Cayman Islands, China, Ontario, Cyprus, Germany, Luxembourg, Singapore and the UK in being able to float on the Hong Kong Stock Exchange.

Ogier acted for Jersey registered Russian aluminum group, Rusal. Rusal achieved listing at end of January 2010, becoming not only the first Jersey company to do so but also the first Russian business to list on the Hong Kong Stock Exchange. Rusal has a market capitalization of US\$21 billion which makes it the largest Jersey company by market capitalization to list on a stock exchange.

Rusal also completed a secondary listing of global depositary receipts on Euronext Paris at the same time as part of the international offering of its shares. Please refer to our client briefing on Listing Russian and CIS Businesses - why choose a Jersey Holding Company to list in Hong Kong or London for further information at the following address: www.ogier.com or contact us for further details.

The approval of Jersey as an Acceptable Overseas Jurisdiction is an important step forward in that any Jersey company which is already operating in Asia, has aspirations there or wishes to target Asian investors, will now be able to follow Rusal in accessing the capital

markets of one of the largest financial centres in the region.

We have also recently seen Jersey incorporated, West China Cement, move its listing from London to Hong Kong.

Examples of Existing Listed Jersey Holding Companies for Chinese Businesses

- China Real Estate Opportunities Limited
 - set up for investors to gain exposure to the Chinese property market
 - AIM listed (2007)
- Prosperity Mineral Holdings Limited
 - iron ore trader
 - AIM listed (2006)
- GMO Limited
 - Wireless Value Added Services sector
 - AIM listed (2006)
- West China Cement
 - Cement producer in China's Shaanxi Province in the PRC
 - AIM listed (2006) - listing transferred to Hong Kong in 2010
- ET-China.com International Holdings
 - serves the corporate and leisure market in South China through the sale of airline tickets, hotel rooms, packaged group tours and associated travel products and services to corporate entities and to individual travelers
 - AIM listed (2007)

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About Ogier

Ogier is an award winning offshore legal and fiduciary services provider. We provide advice on all aspects of BVI, Cayman, Guernsey and Jersey law together with trust and administration services through a global network of offices covering all time zones and key financial markets.

Ogier continues to be recognised as a leading law firm by the principal legal directories, including Legal 500 and Chambers.

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