

Listing Jersey Holding Companies

INTRODUCTION

With capital markets, particularly in Asia, beginning to recover last year, Jersey incorporated (and Ogier client) United Company RUSAL Plc hit the headlines as the first Russian business to be listed on the Hong Kong Stock Exchange, with a market capitalisation of approximately US\$21 billion. Whilst UC RUSAL is the largest company that has recognised the advantages of going to market using a Jersey holding company, many others - from FTSE 100 companies to SMEs - have blazed the same trail.

This briefing looks at why Jersey companies have proved so popular with companies and their investors, and why it is likely that, as the economy continues to recover, we will see the number of IPOs increase and many more international businesses choose a Jersey holding company as their preferred listing vehicle.

WHO AND WHERE?

Prior to October 2009, Jersey companies were already listed around the world, from New York (NASDAQ), to London (Main Market, AIM and PLUS), Amsterdam (Euronext), Toronto (TSX and TSXU) and Stockholm (Stockholmborsen). In October 2009 and upon the application of UC RUSAL, Ogier was instrumental in Jersey being approved as an Acceptable Overseas Jurisdiction by the Hong Kong Stock Exchange, thus paving the way for other Jersey companies to float on the Hong Kong Exchange. As a result, businesses are now able to access one of the world's largest financial centres and also one of the most successful exchanges recently, using a Jersey incorporated vehicle.

Jersey listed companies come from a wide variety of sectors, including oil and gas, mining, pharmaceuticals, media, real estate, support services, construction and materials, finance and investment. Their businesses are typically international, and their names are often widely known.

By way of example, Ogier clients Petrofac (LSE Main Market) and Randgold Resources (LSE Main Market and NASDAQ) are among the Jersey companies featuring prominently in the FTSE 100 index, as do other Jersey companies Experian, WPP and Shire.

High profile businesses like these are a true endorsement for Jersey and all it has to offer forward-looking companies with the drive to succeed on the global markets.

WHY CHOOSE A JERSEY COMPANY?

Jersey's Reputation

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

The Island 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 the Island'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 the Island 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.

Tax Environment

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

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In addition, no UK stamp duty should arise on the transfer of shares in a Jersey company listed on a London Stock Exchange provided that the company's register of members is maintained in Jersey.

In terms of income tax, the general rate of Jersey corporate income tax payable by companies that are tax resident in the Island 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 the Island.

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, the English Companies Act; and
- **they are flexible:** the Companies Law, whilst robust, offers a degree of flexibility not afforded by English law in certain key aspects.

Some examples of this familiarity and flexibility are considered below.

Constitution

A Jersey company's constitution is very similar to that of an English company and the overall form and content of its memorandum and articles of association will therefore be familiar to investors and will typically provide equivalent rights and protections. Nevertheless, 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.

For example:

- **Pre-emption Rights:** there are no statutory pre-emption rights under Jersey law, but pre-emption rights on the issue of shares are generally included in the articles of a Jersey listing vehicle where required by the

relevant listing rules in order to enhance investor protection;

- **Disclosure of interests in shares:** although there are no statutory disclosure and transparency provisions under Jersey law requiring shareholders to disclose interests in shares, it is now commonplace to build provisions into the Jersey company's articles to reflect the requirements of the relevant stock exchange in this area;
- **UK Takeover Code:** the UK City Code on Takeovers and Mergers 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 Jersey public companies to which the Takeover Code does not apply, it is usual (and arguably best practice) to include provisions in the articles prohibiting or restricting the acquisition of shares in the circumstances envisaged by the 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.

Distributions

Jersey companies (including public companies) can make a distribution 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 English public companies incorporated elsewhere which need to have qualifying profits and satisfy additional capital maintenance requirements in order to make a distribution.

Repurchase of Shares

Similarly, a Jersey public company's shares may be repurchased from any source provided that a cash-flow solvency test is met. Again, this gives Jersey listed companies an edge over their counterparts elsewhere in circumstances where the procedure allowing a company to purchase its own shares out of capital may only be available to private companies.

HOW IS THE JERSEY HOLDING COMPANY INTRODUCED?

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,

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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 its 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 are alternative ways of restructuring by using a Jersey company to achieve results which may not be possible, or may be less attractive, using the existing non Jersey holding company or the introduction of a new holding company into the group structure.

ESTABLISHING AND MARKETING THE NEW JERSEY COMPANY

Forming and maintaining the 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 but is not required to have Jersey-resident directors. Ogier frequently handles the incorporation process for its clients and also provides registered office and company secretarial services on an ongoing basis.

In addition, electronic registrar services can be provided by local subsidiaries of UK-based registrars 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.

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 taken as a result. However, these are not considered onerous particularly when other formal approvals may also be required in certain markets where the shares may be sold, and they essentially involve:

- limited Jersey-prescribed information and statements being included in the offer/admission document (few amendments are normally required to the original drafting);
- the prior written consent of the Registrar of Companies in Jersey being obtained before the prospectus is circulated (this consent can be obtained in advance so as not to delay the overall process); and
- a copy of the final offer/admission document being delivered to the Registrar, signed on behalf of the directors of the issuing Jersey company.

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.

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ABOUT OGIER

Ogier is an award winning offshore legal and fiduciary services provider and has considerable experience in assisting clients who wish to take a Jersey holding company to market. The Group advises on all aspects of Jersey, Guernsey, BVI and Cayman law and provides associated fiduciary 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.

The “**one stop shop**” integrated legal and fiduciary service Ogier offers is particularly important to listed company clients who benefit from having all their offshore legal and company administration needs met under one roof. Indeed, most listed clients choose to have one key point of contact with us (usually but not always this is the law firm partner) who coordinates the seamless delivery of all aspects of our offshore services.

This briefing is intended to provide a summary of some of the possible advantages and legal requirements/considerations applicable to listing a Jersey holding company of a trading group. It is not intended to be comprehensive in its scope and is not intended to cover investment funds.

It is recommended that a client seeks legal advice on any proposed transaction prior to taking steps to implement it. Briefings on other subjects (including investment funds) have been produced by Ogier and are available on request or at www.ogier.com.

This briefing has been prepared on the basis of law and practice as at 1 February 2010.

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