Ogier

Listing Jersey Holding Companies

Insights - 30/06/2019

This briefing looks at why Jersey companies continue to be popular as listing vehicles and why it is likely we will see more international businesses choosing a Jersey holding company to lead them to market.

Who and where?

Jersey companies are listed around the world, from New York (NYSE and NASDAQ), to London (Main Market, AIM and PLUS), Paris, Amsterdam (Euronext), Hong Kong, Toronto (TSX and TSXV), Stockholm (Stockholmborsen) and Russia (depositing interests).

Jersey listed companies come from a wide variety of sectors, including commodities, energy, 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.

Why choose a Jersey company?

- Jersey's reputation

Jersey has a reputation as a leading and reputable international finance centre of substance committed to developing and maintaining the highest international standards of regulatory compliance. In part, it is a jurisdiction of choice for many listed companies around the world such as Glencore and WPP. Jersey has **never** formed part of the EU blacklist for 'non-compliant' jurisdictions. Both the Organisation for Economic Co-operation and Development (the **OECD**) and the Economic and Financial Affairs Council of the European Union (**ECOFIN**) have continued to confirm in various reporting that Jersey is compliant with the OECD's international regulatory standards for tax governance.

The OECD has confirmed Jersey as one of the jurisdictions who are compliant with the OECD's international regulatory standards for tax governance based on, in and amongst other things (i) evidence of Jersey's demonstration of transparent tax governance through its compliance with the automatic exchange of information (**AEOI**) and exchange of information on request (**EIOR**) which includes its adoption of the CRS and FATCA framework; (ii) Jersey's recent legislative amendments which address concerns of economic substance and promote fair tax practices and (iii) Jersey's ratification of various BEPs policies over the last years.

- Transparency

Jersey has continued to demonstrate its compliance with the international standards on AEIO and EOIR having become one of only six countries in the world to be found as entirely tax compliant against the OECD and Global Forum on Transparency and Exchange of Information for Tax Purposes (the **Global Forum)** criteria after two rounds of peer review, which evaluates the cross-border cooperation between diverse tax administrations through the implementation of the internationally agreed standards on transparency and exchange of information for tax purpose.

In addition to its recognition for compliance with the AEIO and EOIR practices, the Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and Financing of Terrorism, confirmed in their 2016 report that Jersey was largely compliant with 48 of the 49 Financial Action Task Force recommendations, placing Jersey in the top tier of jurisdictions globally which meet the standards of beneficial ownership transparency.

- Fair Tax Competition

Pursuant to the directive from the Code of Conduct Group (Business Taxation) (**COCG**) to address concerns surrounding substance requirements, Jersey has since promulgated the Taxation (Companies-Economic Substance) (Jersey) Law 2019 (the **Economic Substance Law**) which officially took effect on 1 January 2019. The Economic Substance Law, which has been largely accepted, provides reassurances to the COCG and EU member states on the issue of lack of substance requirements for Jersey-resident companies, by demonstrating how Jersey's existing regulatory framework will standardise and monitor that Jersey-resident companies have sufficient economic substance to substantiate the tax advantages contemplated therein.

- BEPS implementation

Jersey's efforts to prevent harmful tax practices has also been evident in its implementation and participation in the BEPs inclusive framework by ratifying the OECD's Multilateral Instrument (**MLI**) for the prevention of base erosion and profit-shifting (**BEPS**) which is the process by which countries implement the OECD's anti-avoidance measures. Jersey is amongst one of only three jurisdictions to have completed the domestic ratification of the MLI which is set to come into effect once it has been ratified by two additional jurisdictions.

- CRS & FATCA Compliance

The Government of Jersey has restated its commitment to the highest standards of tax transparency and information exchange (which has been proven on many occasions) having signed the FATCA agreement with the United States of America in 2013 and implemented the OECD's Common Reporting Standard (**CRS**). In doing so, Jersey became one of only a few jurisdictions internationally to adopt both the FATCA standards and full CRS rules which further affirms Jersey's commitment to its international cooperation obligations.

As a result of its ongoing legislative and regulatory developments to comply with the OECD's anti-money laundering and transparent tax practice initiatives, Jersey has been able to develop efficient infrastructure, systems and practices which have already efficiently facilitated automatic information sharing with United Kingdom for over a year. Recent industry figures also show that Jersey's banking, funds, private wealth and capital markets activities have continued to improve year on year which serves as affirmation of Jersey's long-standing international reputation and increasing recognition. Excluding UK incorporated companies, this includes more listed companies in London than any other jurisdiction.

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 (and sometimes 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:

1. there is no corporation tax, capital gains tax or capital transfer tax;
2. 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
3. no stamp duty or similar taxes are payable on the issue or transfer of a Jersey company’s shares.

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 this regard Computershare and Link both have offices and registrar businesses 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:

1. its business is managed and controlled in a jurisdiction other than Jersey;
2. it is tax resident in that jurisdiction; and
3. the highest rate of corporate income tax in that jurisdiction is 10% 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:

1. 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
2. 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:

1. 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.
2. 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.
3. 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 or the United Kingdom. For those Jersey public companies to which the Takeover Code does not apply, it is possible 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 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.

- Trading of shares

Shares in a Jersey company listed in London can trade directly through the CREST system without the need for depositing interests. Further shares listed in New York (including NYSE and NASDAQ) can trade in dematerialised form via US direct registration system (DRS).

- 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, 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, provisions in Jersey company law 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 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 and traded in dematerialised form in certain markets.

- 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:

1. limited Jersey-prescribed information and statements being included in the offer/admission document (few amendments are normally required to the original drafting);
2. 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

3. 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.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

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