Snapshot: Debt for Equity Swaps – Jersey

Insights - 23/03/2021

Jersey continues to be the offshore jurisdiction of choice for restructurings involving debt for equity swaps (particularly restructurings of UK and international corporate groups). But what makes Jersey so attractive for these type of transactions?

Why use debt for equity swaps?

A borrower group that is overleveraged and in financial difficulty, but ultimately deemed to be a viable going concern, might be suited to a debt for equity swap. This involves restructuring both the borrower's debts and capital structure. Creditors (which may comprise banks, bondholders or other types of creditor) may find a debt for equity swap appealing if faced with the alternative of seeking to recover existing debt, particularly if that might lead to insolvency.

Restructuring transactions commonly involve the incorporation of one or more holding companies at the top of the borrower's corporate group. Creditors are issued shares in the new holding company at the top of the structure in exchange for a reduction in the existing debt obligations of the borrower group. This is usually combined with amendments to existing finance documents and may involve a bond exchange offer or other issue of securities in favour of the creditors. This could be done as part of a consensual restructuring transaction or pursuant to a court approved scheme of arrangement or UK restructuring plan.

Why use Jersey?

Jersey has seen numerous high profile restructurings recently, with Ogier advising on debt for equity swaps involving Pizza Express, Travelex, Tunstall Healthcare and KCA Deutag. Fat Face and Survitec have also used Jersey structures during their well-publicised restructurings.

The benefits of using a Jersey company, in terms of company law provisions and tax treatment, are extremely wide but generally include separate legal identity, limited liability for shareholders, corporate flexibility and tax neutrality. The Companies (Jersey) Law 1991 enables capital to be denominated in any currency and share capital of either par value or no par value shares to be issued in various classes, including redeemable shares. The structure and constitution of a Jersey company is similar to that of an English company and therefore provides familiarity to debtors, creditors and their advisors looking for a suitable jurisdiction to facilitate restructurings involving debt for equity swaps.

Jersey's tax neutral environment – pursuant to which a creditor will, in general terms, not be subject to tax in Jersey on distributions or interest payments by the newly incorporated Jersey company or stamp duty/other tax upon transfer of the shares/securities – makes it appealing for this reason alone, although each party will need to consider its individual circumstances.

The rise in debt for equity swaps where bondholders have used a new Jersey incorporated holding company is notable and no doubt driven in part by the current economic climate. The increasing trend of alternative lenders participating in finance and restructuring transactions where they may hold equity and debt interests in the same structure has also been a feature of this area.

What key initial issues must be considered in respect of a new Jersey holding company?

- Will the new holding company be a private company or a public company?
- Will the new holding company be tax resident in Jersey, the United Kingdom or another jurisdiction?
- How will the share capital be structured and do any special provisions need to be incorporated in the articles of association of the new holding company to reflect the commercial terms of any agreement between the creditors/shareholders (for example, class rights and reserved matters)?
- Will the new holding company be issuing any securities other than shares, and if so (depending on the number of securities holders and structure of the transaction) do any Jersey regulatory consents need to be obtained? Jersey benefits from a light touch regulatory regime in this area and any necessary consents can generally be obtained quickly and with limited disclosure/filing requirements.
- Do any new securities need to be listed on The International Stock Exchange (TISE) or another exchange for withholding tax reasons or due to the investor base?

The rise of debt for equity swaps in Jersey

Restructuring activity has increased significantly in the past 12 months. Although restructurings are taking place across a wide range of sectors, retail, food and beverage, transportation and oil and gas restructurings have been a consistent theme. There is likely to be increasing pressure on overleveraged borrower groups to enter into restructuring transactions this year, particularly as UK government support for various businesses gradually falls away.

With the current economic climate (and given the wide range of enforcement options available to creditors), we expect the trend of new Jersey holding companies being incorporated for debt for equity swap transactions to continue in 2021, as this structure becomes increasingly familiar to creditors and market standard for UK and international restructuring transactions.

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