

## Cash Box Placings

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The current difficulties experienced by companies raising debt finance is making the use of Jersey Cash Box companies increasingly popular as a fast and efficient way of enabling a United Kingdom public company to raise equity capital for an acquisition through a placing of its shares. In January 2009 five Cash Box structure rights issue or placings were undertaken in the United Kingdom and in the first two weeks of February, two further Cash Box structures were utilised.

Generally, under a typical Cash Box structure a listed company will receive, by way of subscription for ordinary shares in the Cash Box, the entire issued share capital of a Jersey special purpose vehicle whose only asset is its cash reserves.

### **HOW DO CASH BOX STRUCTURES WORK?**

A Cash Box transaction involves the incorporation of a Jersey special purpose vehicle (the "Cash Box") as a subsidiary of a UK PLC. The Cash Box will usually be incorporated with ordinary and redeemable preference shares, and be managed and controlled in the United Kingdom (thus avoiding any need for HMRC consent for the issue or

transfer of shares in the Cash Box). Additionally, if merger relief is required it is common for the underwriters or placing agents to acquire not less than 10% of the Cash Box ordinary shares.

Typically, various agreements set out the terms of subscription (and provide a mechanism to unwind the transaction should the placing not proceed) for both ordinary shares and redeemable preference shares amongst the UK PLC and the placing agents (net of expenses).

The placing agents will subscribe for redeemable preference shares equal in value to the UK PLC shares to be placed by the placing agents. All the preference shares held by the placing agents will then be transferred to the UK PLC in consideration for the issue by the UK PLC of its shares to the placing agents. At the same time the placing agents will transfer their ordinary shares in the Cash Box to the UK PLC.

Since the shares will be issued to the placing agents prior to the placing of the UK PLC shares taking place, the shares in the Cash Box will usually be credited as fully paid against an undertaking to pay

(usually at a certain time on the day of completion). The placing agents will satisfy the undertaking to pay out of the placing proceeds prior to transferring their shares in the Cash Box to the UK PLC. The Cash Box is then owned 100% by the UK PLC who may then extract the funds owned by the Cash Box by means of a redemption of the preference shares, an inter-company loan or a winding up of the Cash Box.

Transfer forms in respect of the ordinary shares and redeemable preference shares will be executed and completed in Jersey to mitigate stamp duty that would otherwise be payable. In practice this is usually done under a power of attorney.

## THE CONVERTIBLE BOND STRUCTURE

Cash Boxes may also be used for convertible bond issues. In this type of structure a Jersey company is established as a subsidiary of a UK PLC to issue bonds to investors, the bonds are convertible into preference shares of the Jersey Cash Box company which are exchangeable into shares of the UK PLC. The Jersey Cash Box would be set up in the same manner as a preference share Cash Box but in addition it would be incorporated as a public company and would need regulatory approvals for the issue of its shares, issue of bonds, circulation of the offer of the bonds and for the raising of money by the UK PLC in Jersey. The assets of a Jersey Cash Box issuing convertible bonds are its cash reserves only.

As before the ordinary shares are issued to the UK PLC. However, convertible bonds are created and issued to the public by the Jersey Cash Box company. The convertible bonds will convert into preference shares subject to the terms of the bond conditions, articles of association and corporate authorisations of the Jersey Cash Box, the articles of association and corporate authorisation of the UK PLC and the paying and conversion agency agreement.

The preference shares are then exchanged for ordinary shares in UK PLC by the investors. The number of ordinary shares will be calculated by dividing the aggregate paid up value of the preference shares in the Cash Box that were issued

on conversion by a pre-determined exchange price.

## BENEFITS OF A JERSEY CASH BOX STRUCTURE

As the placing shares in the UK PLC are not issued for cash, but instead issued in consideration for the transfer of preference shares in the Cash Box, that allows a UK PLC to allot new shares without having to allot them on a pre-emptive basis as required by **section 89(4 of the United Kingdom Companies Act 2006**<sup>1</sup> (the "UK Act"), or to deal with the practical complications of securing shareholder approval for the disapplication of the pre-emption provisions contained in the articles of association. It should be noted that recently investor groups such as the Association of British Insurers and the National Association of Pension Funds have expressed concern about the use of Cash Boxes to avoid pre-emption rights. The increased use of Cash Boxes in rights issues flows from this. It is thought that where a Cash Box is used to fund an acquisition, as this is in the spirit of the UK pre-emption provisions it should raise fewer concerns. As a pure cash raising exercise however, the market response should be carefully considered.

There should be no need for UK PLC to issue listing particulars or a prospectus for the issue of new shares representing less than 10% of its current issued share capital, thus saving on the time and expense involved in preparing listing particulars. Merger relief may also be available under section 612 of the UK Act if the redeemable preference shares do not constitute equity share capital.

Jersey companies are able to redeem shares from any source of funds and in the event of redemption of the redeemable preference shares the directors will be required by the **Companies (Jersey) Law 1991** to make a solvency statement that the directors believe that the Cash Box can, once the redemption has taken place, pay its liabilities as they fall due and carry on business for the next 12

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<sup>1</sup> Note that sections 89 – 94 of the UK Act will be restated with some amendment in ss 560-577 of the Companies Act 2006: these sections to become effective 1 October 2009. Section 89(4) is restated in s 565.

months or until it is wound up, whichever is the earlier.

Until recently, no par value shares were preferred as they gave greater flexibility than traditional par value structures. However, changes to Jersey law in 2008 have removed these differences and par value and no par value shares are redeemable on the same basis.

Thus the use of a Jersey Cash Box structure may make it possible for a UK PLC to raise finance for an acquisition quickly and cheaply at a time when finance is difficult to obtain.

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