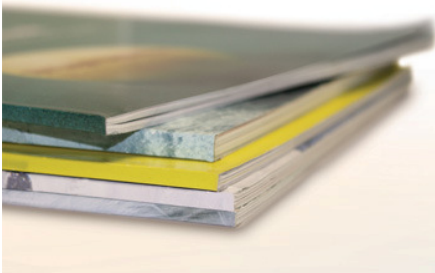


The Use Of Jersey Companies In Convertible Bond Cash Box Structures

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In a convertible bond cash box structure, a Jersey company is established as a subsidiary of a UK PLC to issue bonds to investors. This article will briefly discuss the convertible bond structure.

How Does the Convertible Bond Structure Work?

A convertible bond cash box transaction involves the incorporation of a Jersey special purpose vehicle (the "Cash Box") as a par or no par value public company. The Cash Box will be a subsidiary of a United Kingdom public company ("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).

The ordinary shares are issued to the UK PLC; the convertible bonds are then created and issued to the public by the Cash Box. The convertible bonds will convert into redeemable preference shares subject to the terms of the bond conditions; articles of association and corporate authorisations of the Cash Box, the articles of association and corporate authorisation of the UK PLC, and a paying and conversion agency agreement. The redeemable preference shares are upon issue and 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 redeemable preference shares in the Cash Box that

were issued on conversion by a pre-determined exchange price. The assets of the Cash Box issuing convertible bonds are typically its cash reserves only. The convertible bonds are usually guaranteed unconditionally and irrevocably by the UK PLC.

The Cash Box would need the following regulatory approvals from the Jersey Registrar of Companies:

- consent pursuant to Article 2 of the **Control of Borrowing (Jersey) Order 1958**, as amended ("COBO") to the issue of ordinary shares and redeemable preference shares by the Cash Box;
- consent pursuant to Article 4 of COBO to the issue of securities (being the convertible bonds) by the Cash Box; and
- consent under the **Companies (Jersey) Law 1991**, as amended (the "Law") and the **Companies (General Provisions) (Jersey) Order 2002** (the "2002 Order"), to the offer of the convertible bonds and the redeemable preference shares to the public, and the circulation by the company of a prospectus in relation to the same.

In addition, the UK PLC would need consent under Article 1 of COBO for the raising of money in Jersey, by the issue by UK PLC of ordinary shares pursuant to the conversion and exchange of the convertible bonds. Also, under Article 8 of COBO for the circulation in Jersey of an offer for the exchange of the redeemable preference shares for the UK PLC's ordinary shares. In our experience,

obtaining such consents will not have a detrimental impact on the offering timetable.

The conditions to the above Jersey consents would typically require that a copy of the final draft of the offering circular (on which the offer of the convertible bonds would be launched), be signed by or on behalf of all the directors of the Cash Box, be filed with the Jersey registrar of companies prior to the consent to its circulation becoming effective, and that a copy of the final printed offering circular, signed by or on behalf of all the directors, be filed with the Jersey registrar of companies within 14 days of the date of its issue.

What Documents are Required for a Convertible Bond Structure?

Typically, the following documents set out the terms of the transaction:

- a term sheet produced by the lead manager summarising the main terms of the convertible bonds;
- the offering circular relating to the issue of the convertible bonds, containing (inter alia) the proposed terms and conditions of the convertible bonds, a description of the Cash Box, the UK PLC and the terms of the preference shares;
- a subscription agreement between the lead manager, the Cash Box and the UK PLC, pursuant to which the lead manager agrees to subscribe for the aggregate principal amount of the convertible bonds;
- a trust deed between the Cash Box, the UK PLC and the trustee pursuant to which the convertible bonds are constituted and the UK PLC guarantees the obligations of the Cash Box (the trust deed will also contain covenants by the issuer in support of the specific investor protections provided);
- a paying, transfer, conversion and exchange agency agreement between the Cash Box, UK PLC and the trustee in relation to the convertible bonds which sets out the terms under which the paying agent acts as a conversion or exchange agent dealing with the mechanics of transferring the shares which arise on conversion or exchange to

bondholders; and

- a loan agreement to be made between the Cash Box and UK PLC pursuant to which the Cash Box will lend the proceeds of the bond issue to the UK PLC.

If the convertible bonds are to be listed, it is likely the offering circular will constitute listing particulars for the relevant listing authority. The offering circular will contain a more detailed description of the business of the issuer in respect of a convertible bond offering than a straight bond offering. This is because more information needs to be disclosed to buyers of equity as opposed to debt securities, which carry less investment risk.

Convertible and exchangeable bonds are treated as quasi-equity securities for these purposes and so require fuller disclosure. An exchangeable bond will contain disclosure on the shares into which the bond is exchangeable.

The level of disclosure as to such underlying business will depend on the listing rules of the exchange on which the bond is listed. In the case of an exchangeable bond it will normally be restricted to information derived from published sources.

Consent is commonly sought for the listing of the convertible bonds on the official list of the FSA, and admission of the convertible bonds to the Professional Securities Market of the London Stock Exchange.

Additionally, the UK PLC commonly undertakes to apply to have the ordinary shares issued upon conversion of the convertible bonds, be admitted to the official list, and to trade on the EEA Regulated Market of the London Stock Exchange.

Transfer forms in respect of the ordinary shares and redeemable preference shares in the Cash Box 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.

Benefits of a Jersey Cash Box Structure

Pre-emption

The ordinary shares in the UK PLC are not issued

for cash, but instead issued in exchange for the issued redeemable preference shares in the Cash Box. This will allow a UK PLC to allot new shares without having to allot them on a pre-emptive basis, as required by Section 561 of the **United Kingdom Companies Act 2006** (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 (ABI) and the National Association of Pension Funds have expressed concern about the use of Cash Boxes to avoid pre-emption rights. This may mean that the ABI could, for example, hold boards to account for breaches of the pre-emption group guidelines and recommend members to vote against the re-election of directors after annual general meetings. It is thought that where a Cash Box is used to fund an acquisition, this should raise fewer concerns, as this is within the spirit of the UK pre-emption provisions. As a pure cash raising exercise however, the market response should be carefully considered.

Merger Relief

Merger relief may also be available under Section 612 of the UK Act, hence the Cash Box is often used to create a merger relief reserve for a UK PLC.

Flexible Companies Legislation

Jersey companies are able to redeem shares from any source of funds. In the event of redemption of the redeemable preference shares the directors will be required by the law 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 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 in Jersey law in 2008 have removed these differences, and par value and no par value shares are redeemable on the same basis.

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