



Guide to
Public Offering of Companies Established
in Guernsey, Isle of Man or Jersey

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PREFACE

This Guide considers the public offering of companies established in Guernsey, the Isle of Man and Jersey with a particular emphasis on the London Stock Exchange or the Alternative Investment Market of the London Stock Exchange.

It is recognised that this Guide will not completely answer detailed questions which clients and their advisers may have. It is intended to provide a sketch of the subject matter covered. The Guide is, therefore, designed as a starting point for a more detailed and comprehensive discussion of the issues.

Appleby
Guernsey, Isle of Man and Jersey
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1. Introduction

If you are using an offshore company to list on the London Stock Exchange (“**LSE**”) or the Alternative Investment Market of the LSE (“**AIM**”), on two out of three occasions, you will be using a company domiciled in one of the Crown Dependencies of Guernsey, the Isle of Man or Jersey. If you are using an offshore company to list on any other stock exchange or market, it is likely a company domiciled in one or more of the Crown Dependencies will already be listed there.

Appleby acts in conjunction with the lead advisers to companies proposing to list to ensure that all aspects of the listing undertaken in the relevant jurisdiction run smoothly including, but not limited to: advising on the most appropriate form of corporate vehicle, drafting or reviewing constitutional documents of the company; reviewing the prospectus to ensure legal and, where relevant, regulatory compliance; advising on corporate governance and directors’ duties; and advising on local due diligence issues.

2. Why Choose Guernsey, Isle of Man or Jersey?

The main advantages for using any of these jurisdictions for public offerings are:

- they are known to investors and the path to listing is straightforward;
- fast incorporation of companies;
- low rates of corporate tax;
- no capital gains or stamp duty taxes;
- shares may be held in uncertificated form through CREST/Euroclear;
- flexible company laws based on and similar to English laws;
- well regulated offshore financial centres;
- convenient time zones; and
- all located within the British Isles but not part of the European Union.

3. Company Incorporations, Migrations and Mergers

3.1 Incorporation

In each jurisdiction, companies can be incorporated quickly either using a standard set of constitutional documents which can be subsequently amended to incorporate the provisions necessary for listing or bespoke constitutional documents compliant with the listing rules of the relevant exchange/market.

3.2 Public/Private Companies

There is no distinction between public and private companies in Guernsey and very little distinction between the two in the Isle of Man.

In Jersey, a private company which circulates a prospectus relating to its securities or has its securities admitted to trade on a regulated market (as defined in the law) shall be subject to the provisions of the law as though it were a public company.

3.3 Directors and Ownership

Details of the directors, the proposed activities of the company and its corporate group as well

as the ultimate beneficial owners of the company will need to be provided to the appointed licensed corporate services provider in Guernsey and in the Isle of Man and the Jersey Financial Services Commission (“**JFSC**”) in Jersey.

There is no requirement for the directors to be resident in Guernsey, the Isle of Man or Jersey, save where an entity is regulated.

3.4 Registered Office

Every Guernsey, Isle of Man and Jersey company must have its registered office in Guernsey, the Isle of Man and Jersey respectively.

3.5 Migrations

A company which is incorporated outside Guernsey, the Isle of Man or Jersey may apply for authorisation to seek to be redomiciled into Guernsey, the Isle of Man or Jersey (as the case may be), if it is authorised to make such application by the laws of its home jurisdiction. A company incorporated in Guernsey, the Isle of Man or Jersey may apply for authorisation to seek continuance as a body incorporated under the laws of a foreign jurisdiction.

3.6 Mergers

Guernsey companies may merge with both Guernsey and non Guernsey companies.

The Isle of Man Companies Act 2006 (“**2006 Act**”) contains express provisions for the merger of two or more companies. As long as one of the companies in the merger is a 2006 Act company, the other company or companies may be a company incorporated under the Isle of Man Companies Act 1931 (“**1931 Act**”) or a 2006 Act company.

The 1931 Act allows for the merger of 1931 Act companies by means of a scheme of arrangement. A scheme of arrangement must be approved by a majority in number representing three-fourths in value of the members of each company which it is proposed to merge. The scheme of arrangement must be sanctioned by the Manx High Court before it becomes effective.

Jersey companies may merge with foreign companies, foreign incorporated bodies and also bodies that are incorporated in Jersey but are not companies, such as foundations (Jersey companies are already permitted to merge with other Jersey companies). All mergers will be subject to a merger agreement between the merging companies or bodies. The effect of the merger will be either a survivor body (one of the existing merging bodies, which absorbs the others) or a new body created by the merger, pursuant to the merger agreement.

4. Tax

4.1 Guernsey

Guernsey companies are subject to zero rate tax. Companies incorporated in Guernsey may be considered tax resident in another jurisdiction where they are centrally managed and controlled in that other jurisdiction. Guernsey investment funds are eligible to be exempt from tax.

There is no inheritance tax, capital gains tax or goods and services tax in Guernsey.

4.2 Isle of Man

Isle of Man companies are liable to Manx income tax at a zero rate on their profits. Companies incorporated in the Isle of Man may be considered tax resident in another jurisdiction where they are centrally managed and controlled in that other jurisdiction.

Notwithstanding the zero rate of corporate tax, there are measures in place which are designed to ensure that Isle of Man resident shareholders are subject to Isle of Man income tax on their share of undistributed corporate profits. The Attribution Regime for Individuals (“**ARI**”) attributes to shareholders resident in the island their proportionate share of the profits of certain Isle of Man companies. However, where a company’s shares are traded on a recognised stock exchange, they are exempt from ARI. The Isle of Man government has recently announced that ARI will cease from 6 April 2012.

There is no inheritance tax or capital gains tax in the Isle of Man.

4.3 Jersey

A standard zero rate of corporate tax now applies to companies being listed on a stock exchange. However, companies incorporated in Jersey may be considered exclusively tax resident in another jurisdiction where they are centrally managed and controlled outside Jersey, are tax resident in the jurisdiction of control and management, and where the rate of corporation tax in that jurisdiction is 20% or higher.

There is no capital gains tax in Jersey nor is stamp duty payable on the authorised share capital or on the issue or transfer of shares (other than shares of a Jersey company owning Jersey real estate).

5. Uncertificated Shares

In each jurisdiction, subordinate legislation exists pursuant to which shares may be settled through the CREST system in the same manner as shares in UK established companies: Guernsey – the Uncertificated Securities (Enabling Provisions) (Guernsey) Law 2005; Isle of Man – the Uncertificated Securities Regulations 2006, as amended; and Jersey – the Companies (Uncertificated Securities) (Jersey) Order 1999.

6. Company Law and Prospectus Requirements

6.1 Dividends and Distributions of Capital

Distributions, including dividends, made by a Guernsey company may be paid out of any source, including any capital account, provided the directors certify that the company passes a statutory solvency test.

Distributions, including dividends, by a company incorporated under the 2006 Act may be made out of any source, including any capital account, provided the directors certify that the company passes the statutory solvency test. For companies incorporated under the 1931 Act there is a statutory definition of distributable profits. Accountancy advice should be sought to

determine what profits are available for distribution, and dividends may not be paid out of capital or borrowed money.

Distributions (including dividends), for a par value Jersey company may be made out of any source including any capital account (apart from the capital redemption reserve or the nominal capital account) provided that the directors make the required solvency statement.

6.2 Redemption and Re-purchase of Shares

Guernsey has moved from a capital maintenance model to a solvency model. As such, a reduction of capital, to the extent a company has an authorised share capital, is permitted subject to the board certifying that the company passes a statutory solvency test. The solvency test is also a prerequisite to the redemption or re-purchase of shares.

In the Isle of Man, there is a fundamental principle applicable to 1931 Act companies that they cannot generally reduce their share capital or effectively return capital to members, without complying with stringent statutory requirements.

The share capital of a 1931 Act company may be reduced in two ways, depending on whether the reduction is to un-issued or issued share capital:

6.2.1 un-issued shares in a company's authorised capital may be cancelled, and the authorised share capital reduced appropriately, if the company's articles permit it without the need for a court application; and

6.2.2 a court application is needed if share capital represented by issued shares is to be reduced.

The 2006 Act permits the redemption, purchase or other acquisition by a 2006 Act company of its own shares provided the directors certify that the company passes the solvency test.

The redemption or re-purchase of shares in a Jersey company is permitted from any source provided the directors sign statements of solvency.

In order to protect creditors, a reduction of capital of a Jersey company is generally subject to confirmation by the court where the shares in the company are limited and the reduction extinguishes or reduces the liability on any amount unpaid on a share or reduces the net assets of the company.

6.3 Financial Assistance

A Guernsey company may give financial assistance to acquire its shares or shares in its holding company provided it passes the statutory solvency test.

Isle of Man private companies formed under the 1931 Act and all Isle of Man companies formed under the 2006 Act may give financial assistance to acquire its shares or shares in its holding company. An Isle of Man public company formed under the 1931 Act may not generally give financial assistance.

Jersey companies may give financial assistance to acquire its shares or shares in its holding company but if that assistance amounts to a distribution of company assets it may need

sanction by special resolution.

6.4 Auditors

Certain Guernsey companies may be exempt from audit requirements although it would be unusual for a listed company to be audit exempt.

Certain Isle of Man companies may be exempt from audit requirements. All public companies established under the 1931 Act, and listed companies established under the 2006 Act must appoint auditors.

In Jersey, a public company must appoint an auditor to examine and report on its accounts in accordance with the law.

7. Regulatory Issues

A company which is listing its shares on, for example, the main market of the LSE or AIM, must provide a prospectus or listing particulars (primarily containing information on the company and its business) which satisfies certain listing and prospectus rules.

In addition to the requirements of the relevant exchange, there are the following regulatory requirements depending on the jurisdiction of the company.

7.1 Guernsey

Provided the Company is listing on an IOSCO recognised exchange, there are no regulatory requirements.

7.2 Isle of Man

If an Isle of Man corporate vehicle does not provide its investors with a right of exit then, even if it is an investment vehicle aimed at spreading investment risk, it will not be an open-ended investment company under Manx law and therefore will not be subject to regulation in the Isle of Man. Closed-ended investment companies are therefore treated in the same way as any other company for regulatory purposes and no regulatory approvals are required. There are no prescriptive requirements relating to the content of a prospectus, although companies formed under Manx law must ensure that any prospectus issued by them includes all material information of which the directors were aware at the time of its issue (or of which they would have been aware had they made reasonable enquiries) and which a prospective investor would reasonably expect to be included to enable him to make an informed investment decision as to whether or not to invest. The information must be set out fairly and accurately. The prospectus is not subject to any filing requirements.

7.3 Jersey

Prior to issuing securities in a Jersey company, it is necessary to obtain consent under the Control of Borrowing (Jersey) Order, 1958 from the JFSC.

Prospectuses in Jersey should contain prescribed information in compliance with the provisions of the Companies (Jersey) Law 1991 and the Companies (General Provisions)

(Jersey) Order 2002 and require approval of the Registrar of Companies in Jersey.

The prospectus should include all material information a prospective investor would reasonably require including details relating to the offer, capital, material contracts, accounts and reports, directors, secretary, advisers and include prescribed statements. There may be derogations from the requirements of the law provided the Registrar of Companies is satisfied they do not affect the substance or are intended to mislead. There should also be a statement by the directors that the facts contained in the prospectus are true and accurate in all respects and not misleading.

A memorandum of compliance should be completed, signed and filed with the final form of prospectus. The final form of prospectus should be signed by or on behalf of the directors of the company and will be filed in the public registry. There is no additional cost to the initial incorporation fee.

Every Jersey company must have its registered office in Jersey. The Registrar of Companies must be satisfied before: a) registering a company; or b) approving a change of address, that the occupier of the premises proposed to be used as the registered office has authorised the use of the premises for that purpose.

Although the time taken by the Registry to carry out the review stages can vary, there is usually response to the initial review stage within 5 days and the document review stage within a further five days. Occasionally, those stages may be combined to create one stage with a five day review. The formal registration/consent stage rarely takes more than one or two days.

8. Other Regulatory Issues

8.1 UK Disclosure and Transparency Rules

There are no statutory disclosure and transparency provisions under Guernsey, Isle of Man or Jersey law requiring shareholders to disclose interests in shares. It is now standard practice to include provisions in the constitution of the company to reflect the requirements of the relevant stock exchange.

8.2 Pre-emption Rights

Although the respective legislation in Guernsey, Isle of Man and Jersey does not provide for pre-emption rights, certain stock exchanges require such provisions and they are generally included in constitutive documents of a company in order to increase investor protection.

8.3 UK City Code on Takeovers and Mergers

Listed companies which are managed and controlled in Guernsey, Isle of Man or Jersey must adhere to the UK City Code on takeovers and mergers. Companies which are not required to comply with the Code usually, as a matter of good practice, include provisions in the constitution of the company prohibiting or restricting share purchases in the circumstances set out in the Code and the directors have wide powers relating thereto.

For more specific advice on Public Offering of Companies Established in Guernsey, Isle of Man or Jersey, we invite you to contact one of the following:

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