mourant

GUIDE

Jersey Holding Companies for SPACs and Other Listed Groups

Last reviewed: September 2021

Introduction

This guide examines some of the benefits a Jersey holding company could offer for SPACs or other groups considering an initial public offering (IPO), or to groups with an existing listing.

Key advantages of a Jersey holding company

Key advantages of a Jersey holding company include the following.

Company law

The Companies (Jersey) Law 1991 (the **Companies Law**) is based on similar legislation in the UK, which is familiar to investors around the world. The constitution of a Jersey company is, therefore, similar to that of a company incorporated in the UK, and the Companies Law is sufficiently flexible to permit a Jersey company's memorandum and articles of association (the constitution of a Jersey company) to be drafted to accommodate the requirements of the relevant listing rules.

The Companies Law tends to be more flexible than the UK's company law. For example, the rules on distributions to shareholders are less strict, there are less restrictions on the transactions a company can enter into with its directors, directors' duties are more straightforward and the rules relating to financial assistance, issuing shares at a discount and regulating the payment of commissions have been abolished.

This combination of familiarity, robustness and flexibility can be very attractive for both businesses and their investors.

Tax

Tax benefits Jersey companies can offer include tax neutrality at the holding company level, no income or capital taxes in Jersey, no withholdings on account of Jersey tax on the payment of dividends or interest on loans, and no stamp duty or other similar taxes in Jersey on the issue or transfer of shares in a Jersey company. See 'Jersey taxation' below for further information.

London's stock exchanges

Particular benefits of using a Jersey company to list on the London Stock Exchange's Main Market or AIM include:

- No UK stamp duty is payable on share transfers (see below).
- Shares in a Jersey company can be held and traded in uncertificated form through the CREST system, avoiding the inconvenience and cost involved in issuing global depositary receipts.
- A Jersey company is potentially eligible for inclusion in the FTSE 100, FTSE 250 and other FTSE Indices, giving access to a potentially larger range of institutional investors.
- The UK Takeover Code applies to Jersey companies listed on the LSE's Main Market and AIM. The UK Takeover Code offers investor protection, which is a desirable objective as far as many investors are concerned and can be an advantage in marketing a company's securities.

Other stock exchanges

As well as London's stock exchanges, Jersey companies have been listed on a variety of other stock exchanges, including the New York Stock Exchange, NASDAQ, Euronext, the Toronto Stock Exchange and the Hong Kong Stock Exchange. Provided such companies do not have a majority of UK resident directors, they should also not be subject to the UK Takeover Code (which may appeal to a non-UK investor base). In addition, shares in Jersey companies can be listed and traded directly in uncertificated form on most leading stock exchanges (and can be held directly within the Direct Registration System in the US) without the need for global depositary receipts.

Jersey's reputation

- Jersey complies with all relevant international standards on financial regulation, AML and tax transparency and information exchange and this compliance is recognised by the relevant international bodies.
- Jersey has a stable and sophisticated finance industry with highly qualified professionals in law, accountancy, banking, investment and fund administration.
- Jersey has a long record of economic and political stability and is in the same time zone as London.

Track record

Jersey companies have been used as listed holding companies for a wide variety of businesses, from small enterprises with a limited number of investors and employees to large multinational groups with thousands of investors and employees. Examples include WPP plc (advertising), Experian plc (information services), Glencore plc (commodities), Petrofac Ltd (oil and gas), Polymetal International plc (precious metals mining), IWG plc (serviced offices), Janus Henderson Group plc (fund management), Amcor plc (packaging), Mimecast Ltd (technology) and WNS (Holdings) Ltd (business process outsourcing). In total over 100 Jersey holding companies have been listed on global stock exchanges, with a combined market capitalisation of over US$150 billion. Some businesses have chosen to use a Jersey holding company from early in their business cycle and prior to listing, while others have introduced a Jersey holding company much later as a means of mitigating their tax burden and thereby increasing earnings per share.

Benefits of Jersey holding companies for SPACs

The US market for special purpose acquisition companies (**SPACs**) has been buoyant recently and that is expected to lead to a rise in interest in SPACs in the UK and European markets. In further support of this, in August 2021 the UK's Financial Conduct Authority (the **FCA**) announced changes to its Listing Rules for SPACs. In particular, the FCA has removed the presumption of suspension on announcement of an acquisition for SPACs that meet certain criteria which are intended to strengthen the protections for investors, while maintaining the smooth operation of the market. The proposed changes were designed to provide an alternative approach for SPACs that must otherwise provide detailed information about a proposed target to the market to avoid being suspended.

The additional investor safeguards that the FCA will require SPACs to provide in order to benefit from the alternative approach include:

- a redemption option allowing investors to exit a SPAC prior to any acquisition being completed;
- ensuring money raised from public shareholders is ring-fenced;
- requiring shareholder approval for any proposed acquisition; and
- a time limit on a SPAC's operating period if no acquisition is completed.

SPAC issuers unable to meet the conditions, or those choosing not to, will continue to be subject to a presumption of suspension.

Taking into account these and other features US SPACs commonly contain (some of which are likely to be replicated in UK SPACs), benefits Jersey holding companies can offer as SPACs include the following (in addition to benefits outlined elsewhere in this note):

- greater flexibility on redemptions and share buy-backs to enable the SPAC to satisfy the redemption option (e.g. shares can be redeemed or purchased from share capital, and the price can be satisfied by non-cash consideration (though the directors will need to make a solvency statement));

- a well-established trusts' regime which provides for non-charitable purpose trusts and with a wide range of trust company service providers to assist with any trust account arrangements for ring-fencing investor funds;
- a flexible companies law enabling bespoke share rights to be incorporated into the articles of the SPAC to reflect the respective rights of the founder shares, ordinary shares and warrants. For example, there is no statutory right to appoint or remove directors by ordinary resolution, so this right could be reserved to the founder shareholders if so desired (as is common in US SPACs). The Companies Law also enables the disapplication of provisions which may not be appropriate pre-acquisition (e.g. pre-emption rights) but the adoption of such provisions which may be appropriate for investor protection post-acquisition;
- flexibility to change the jurisdiction of incorporation of the company (via a corporate migration) or tax residence of the company (via changes made to the location of board meetings and the place of central management of control) to reflect the needs of the ultimate target;
- the ability to have different thresholds for different types of special resolution, meaning the threshold to amend certain provisions of the articles may be different (as is common in US SPACs);
- the ability to have warrants governed by a foreign law (such as English or New York law) and flexibility as to their terms;
- flexibility as to conversion terms which will commonly apply on the conversion of founder shares into ordinary shares following the relevant acquisition; and
- (more likely for US SPACs), the ability to adopt provisions in the articles of the company to discourage unsolicited takeover proposals.

In addition, Jersey is a jurisdiction commonly used for establishing sponsor vehicles, so this may provide greater alignment between the issuer and sponsor.

Ways of introducing a Jersey holding company to an existing corporate structure

There are three common scenarios:

New holding company for existing business

A new Jersey company is incorporated, and by way of a group re-organisation (usually a share for share exchange or scheme of arrangement), the Jersey company is inserted at the top of the existing group structure so that it becomes the new holding company of the existing business. This could be done prior to listing, or even if the company is already listed.

Migrate an existing holding company to Jersey

It is possible in many cases to re-domicile a foreign holding company to Jersey, so that it continues in existence as a Jersey registered company. This could be done prior to listing, or even if the company is already listed.

New business

If the initial shareholders of a new enterprise know in advance of the desire to list at a later stage, a Jersey holding company could be used from the outset.

Establishing the Jersey company

It is possible to establish a Jersey company on a same-day basis. A Jersey company is required to have its registered office in Jersey and must maintain its share register in Jersey (though it can have a branch register elsewhere), and there are well-known companies which provide electronic registrar services in Jersey (including Computershare and Link Asset Services), which services will be required upon the listing of the shares. However, unless the company performs a regulated activity, there is no need for a Jersey company to appoint Jersey resident directors.

The company will need to be established as a public company rather than a private company. The Companies Law imposes few extra burdens on public companies. A summary of the key differences between a Jersey public and private company is available on request.

The articles of association of the company will need to be prepared in a form that satisfies the requirements of the listing rules for the relevant stock exchange. We have experience of preparing such articles of association.

Marketing of shares and content of the offer document

The formal offer or admission document which is sent to investors and which describes the shares will usually qualify as a prospectus for Jersey purposes (this is not the same as an EU prospectus). This means that, amongst other things:

- the Registrar of Companies in Jersey (the **Registrar**) must have given its prior consent to the circulation of the offer document;
- the offer document must contain certain prescribed information (e.g. investment warnings, although these are not generally regarded as onerous and most are usually already covered by a well drafted offer document); and
- a copy of the offer document (signed by or on behalf of the directors of the company) together with a signed copy of any report included in the offer document must be delivered to the Registrar.

The application for the Registrar's consent must be made to the JFSC. The application process is straightforward and should not impact on the listing process or timing.

Jersey taxation

Jersey offers a relatively simple and favourable income tax regime, and there are no capital gains, capital transfer or corporation taxes payable in Jersey.

A Jersey company is either treated as:

- tax resident in Jersey but subject to a general zero rate of corporate tax (certain regulated businesses, banks and utility companies will however be taxed at 10 per cent or 20 per cent); or
- not tax resident in Jersey (and, therefore, not subject to Jersey income tax) if it is centrally managed and controlled outside Jersey in a country or territory where the highest rate at which any company may be charged to tax on any part of its income is 10 per cent or higher, and the company is resident for tax purposes in that country or territory.

A Jersey company does not have to make any withholdings or deductions from payments of dividends or interest on account of Jersey income tax, and a person who is not resident in Jersey is not liable to Jersey income tax on dividends or interest paid by a Jersey company.

No stamp duty or other similar taxes are payable in Jersey on the issue or transfer of shares in a Jersey company and, provided the company's register of members is maintained in Jersey, shareholders in a Jersey company listed in London should not be subject to the UK's 0.5 per cent stamp duty on share transfers.

Jersey companies incorporated to act as listing vehicles should therefore be subject to no tax in Jersey, regardless of whether they are tax resident in Jersey or not.

The ability for a Jersey company to be non-tax resident in Jersey may offer a significant advantage to a company if it wishes to demonstrate that it is tax resident in another jurisdiction and not Jersey. Many Jersey companies which are listed choose to be tax resident elsewhere, combining the benefits of the relevant tax regime with the benefits of being incorporated in Jersey. For example, Amcor plc, Janus Henderson plc and WPP plc are tax resident in the UK, Experian plc is tax resident in Ireland and Glencore plc and IWG plc are tax resident in Switzerland.

Expert tax advice should be sought in each case.

If a Jersey company is tax resident in Jersey it will need to comply with Jersey's economic substance rules. This should not prove problematic and further guidance is available on request.

Why use Mourant?

We advise a wide range of companies listed on global stock exchanges, including multiple FTSE 100 and FTSE 250 companies. We have the expertise required when advising on such transactions, and have experience in advising Jersey companies listed on a variety of stock exchanges.

Contacts

A full list of contacts can be found here.