

Convertible Bonds - Jersey Cashbox Structures

INTRODUCTION

2009 saw the revival of the convertible bond market in Europe and commentators expect continued activity in this market in 2010 as corporates continue to diversify sources of funding away from bank lending coupled with strong investor demand.

Using a cash box structure for a bond issue has two key benefits:

- the shares issued by UK Plc on conversion of the bonds are issued for non-cash consideration and so the pre-emption provisions under the Companies Act 2006 are not applicable;
- the bond issue may be structured to enable UK Plc to take advantage of the merger relief provisions under the Companies Act 2006, thus enabling UK Plc to create distributable reserves rather than share premium on the issue of its shares.

This briefing gives an overview of the two principal cash box structures used for convertible bond issues and the advantages of using a Jersey company in the structure. For further details on general cashbox structures [click here](#).

CONVERTIBLE BOND STRUCTURES

UK Plc Issuer Transaction

In a UK Plc Issuer transaction, bonds are issued by the UK Plc in consideration for the transfer to it of shares issued by a newly incorporated Jersey company ("Jerseyco") which will be established a private company. The ordinary shares of Jerseyco will be held by UK Plc. If merger relief is required the Manager will also subscribe for 11% of the ordinary shares in Jerseyco.

Jerseyco will issue redeemable preference shares to the managers of the issue (the "Managers") fully paid up as to the net proceeds of the bond issue.

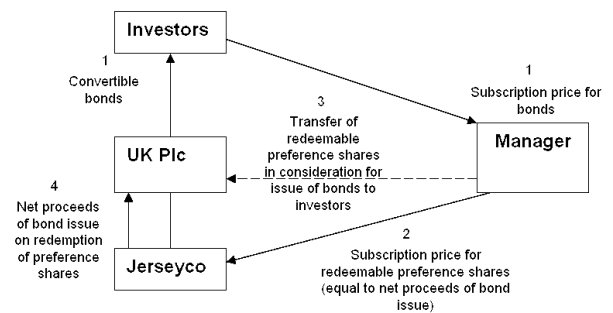
The Managers will then transfer the redeemable preference shares to UK Plc in consideration for the issue by UK Plc of convertible bonds to the investors.

As the UK Plc shares are issued for non-cash consideration (being the Jerseyco redeemable preference shares), UK statutory pre-emption rights do not apply and it is not necessary for UK Plc to seek shareholder approval for the disapplication of pre-emption rights.

UK Plc is then able to redeem the redeemable preference shares for an amount equal to the net proceeds of the bond issue. Jerseyco can then be wound up.

From a Jersey perspective this is in all respects the same as a standard cash box used for a placing or rights issue.

The bonds will then be converted in accordance with their terms.



Cashbox Issuer Transaction

In a Cashbox Issuer transaction, Jerseyco (which will need to be established as a public company), issues to investors the convertible bonds which are typically guaranteed by UK Plc. All the ordinary shares of Jerseyco will be held by UK Plc and the rights attaching to be redeemable preference shares will be varied from those in a standard cash box to enable merger relief to be obtained.

The proceeds of the bond issue are invested by Jerseyco to allow it to meet its interest obligations under the bonds pending conversion. This investment usually takes the form of Jerseyco lending the money to UK Plc at an interest rate equal to that which it is paying on the bonds.

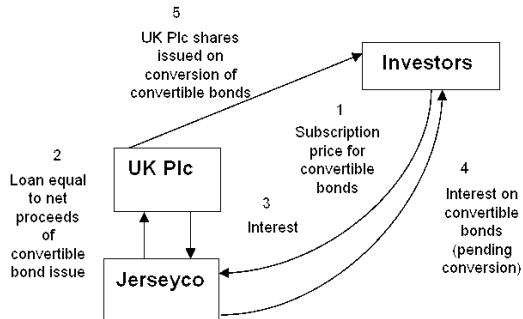
The bonds are convertible into exchangeable redeemable preference shares of Jerseyco which, on conversion, are automatically exchanged for shares in the UK Plc so that the bondholder ends up holding UK Plc shares.

The UK Plc shares will have been issued for non-cash consideration (being the Jerseyco redeemable preference shares) and, therefore, UK statutory pre-emption rights do not apply and it is not necessary for UK Plc to seek shareholder approval for the disapplication of pre-emption rights.

Following conversion of all the bonds, UK Plc can redeem the preference shares it holds in Jerseyco (setting off any

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outstanding liability it has under the Jerseyco loan) and Jerseyco can be wound up (although this will be at a much later date depending on when conversion occurs).



- **Quality of financial services providers** - Jersey has had a thriving financial services sector for over thirty years, and there is a strong body of law firms and administrative service providers on the Island.

- Jersey is a member of the OECD and on its White List of Offshore Finance Centres.

ADVANTAGES OF USING OGIER

Ogier can offer all legal and administration services (including director services) which a UK Plc may require under Jersey law for a cash box transaction and has an extensive experience and know how having acted for over 70 UK Plc's in equity cash box transactions with an aggregate value in excess of £70 billion.

RECENT CONVERTIBLE BOND CASH BOX TRANSACTIONS BY OGIER

Ogier acted for Autonomy plc on its £500m convertible bond issue in March 2010 where the Autonomy plc was the bond issuer.

Ogier also acted for Aegis Group plc on its £190m convertible bond issue in April 2010 where the Jersey company was the bond issuer.

ABOUT OGIER

Ogier is an award winning offshore legal and fiduciary services provider. The Group advises on all aspects of BVI, Cayman, Guernsey and Jersey law and provides fiduciary services through a global network of offices covering all time zones and key financial markets.

Ogier continues to be recognised as a leading law firm by the principal legal directories, including Legal 500 and Chambers.

JERSEY REGULATORY APPROVALS

No Jersey regulatory approvals are required for a UK Plc Issuer transaction except in relation to the issue of shares by Jerseyco which will be obtained on incorporation.

In a Cashbox Issuer transaction, regulatory approval in Jersey is required to the circulation of the offer for, and the issue of, the bonds. The UK Plc may also need consent for raising money in Jersey. However, such regulatory consents can usually be obtained from the Jersey authorities in a very short time-frame and, accordingly, should not delay the transaction timetable.

ADVANTAGES OF A JERSEY COMPANY

Reasons for using Jersey for a cashbox transaction include:

- **Tax neutrality for Jerseyco** - 0% rate of Jersey income tax, no capital gains tax or withholding tax in Jersey and no stamp duty on the issue or transfer of shares.
- Although incorporated in Jersey, Jerseyco **can be resident in the UK provided** it is managed and controlled from the UK. There is no need to appoint Jersey resident directors.
- Jersey has an **established legal framework** based on established English law principles but with a greater degree of flexibility.
- **Corporate advantages** - a Jerseyco can redeem shares from any source of funds, including share capital, provided such shares are fully paid.
- **Speed of incorporation** - a Jerseyco can usually be established within 24 hours.
- **Speed of the regulatory authorities** in issuing the relevant consents means that even the most demanding timetables can usually be met.
- **Winding up** a solvent Jerseyco is a simple, quick and inexpensive procedure which can be completed within a day.

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