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AIM for Guernsey and the Specialist Fund Market

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Introduction

Offshore listings on the Alternative Investment Market (AIM) are growing in popularity, with Guernsey becoming an ever more attractive offshore base from which to incorporate companies which can then be listed on AIM.

This briefing is intended to assist clients or advisers considering listing a company incorporated in Guernsey on AIM. It addresses some of the relevant considerations and issues for the establishment of an AIM listed company incorporated in Guernsey.

Advantages of Guernsey as an Offshore Jurisdiction

Offshore holding companies are becoming increasingly attractive for foreign domiciled trading groups seeking to list on international markets. Key benefits of Guernsey as an offshore jurisdiction include:

- its reputation as a well-regulated market;
- similarities to English company law;
- well-established but innovative corporate structures;
- direct access to CREST for shares of companies incorporated in Guernsey. Shares of companies issued in other jurisdictions cannot be admitted to CREST directly. CREST is a paperless settlement procedure enabling securities to be held in uncertificated form;
- a highly advantageous corporate tax regime. There are currently no corporate, capital gains, value added or inheritance taxes in Guernsey;
- corporate tax rates are reduced to zero except for certain types of locally resident trading companies, which will pay 10% tax on income; and
- the convenience of its location close to Europe, and particularly London, making logistics that much easier.

Pre-listing restructuring

Foreign domiciled companies seeking to list on AIM may need to undertake some form of corporate restructuring, prior to a formal listing. This can be accomplished by the introduction of a Guernsey holding company into an existing group structure. This will usually be effected through a share-for-share exchange, prior to listing.

Alternatively, it is possible to re-domicile a foreign holding company in Guernsey, if the legislation of the place of incorporation permits the migration of the company into Guernsey. The holding company then continues its existence as a Guernsey registered company.

Formation of a Guernsey Holding Company

Companies can be incorporated within 24 hours. Companies may only be formed by corporate service providers (CSP), who are licensed by the Guernsey Financial Services Commission (the GFSC) under the Fiduciaries Law.

There is no requirement to have Guernsey resident directors. However, every Guernsey registered company has to have a registered office in Guernsey.

Subject to certain exceptions, a Guernsey company must appoint a resident agent who must keep a record of beneficial owners of a company. The resident agent must be either a Guernsey resident director or a licensed CSP. The resident agent will have responsibility for ensuring that beneficial ownership records are kept up to date.

Regulatory Considerations

It is important to establish whether the company to be listed is carrying on any business regulated by the GFSC (banking, insurance, fiduciary and collective investment schemes.) If it is, it will need to be appropriately licensed or authorised.

The disclosure document for an AIM listing of a Guernsey company will **not** ordinarily need to comply with the requirements of the Prospectus Rules, 2008, issued by the GFSC. This is because of a specific exemption from the rules for securities listed on certain exchanges.

Differences between English and Guernsey Companies

The general features of Guernsey companies have followed English company law. However, there are certain distinctions between Guernsey and English companies law which may be pertinent where a Guernsey company is seeking a listing on AIM. These are considered in turn below.

Company Name

There is no distinction between private and public companies. The name of a Guernsey company must end with 'Limited'.

Directors

There is no statutory requirement for a Guernsey resident individual to be a director of a Guernsey company (save in the case of companies carrying out regulated activities) although tax advice may mean that this does become necessary.

Pre-emption Rights

There are no requirements relating to statutory pre-emption rights. However, this provision tends to be incorporated into the Articles of Incorporation of a company looking to list on AIM.

Meetings

There is no requirement for directors' or shareholders' meetings to be held in Guernsey.

Share Capital

A Guernsey company can have shares denominated in any currency. The following classes of shares are permitted: ordinary shares, preference shares, redeemable shares, non-redeemable share and shares with or without voting rights. Bearer shares are not permitted.

Introduction of new Guernsey Company Law

The Companies (Guernsey) Law 2008 (the Companies Law) came into force on 1st July 2008 alongside a new Companies Registry. The new legislation introduces a number of significant changes as follows:

■ Registrar of Companies

A Registrar of Companies (the Registrar) has been appointed to undertake the role of H.M. Greffier in relation to company registry matters. All company information will be held and accessed electronically, with standard documents (annual returns etc.) being received in electronic form.

■ Simplified Incorporation Procedure

The incorporation of companies is now an administrative process and no longer requires a court application. Incorporations are submitted online to the Registrar.

■ Unlimited and Mixed Liability Companies

The Companies Law extends the range of companies that can be incorporated to include unlimited liability companies and mixed liability companies.

■ Standardised Articles of Incorporation

The incorporation of companies has been simplified with the creation of standardised articles of incorporation.

■ Unrestricted Objects

Unless otherwise provided in the memorandum, a company's objects are unrestricted.

■ Single Member Companies

The Companies Law allows for the creation of single member companies.

■ Simplification of Capital Maintenance Rules

The rules on capital maintenance have been simplified. The new law introduced a new solvency test model as a sole test to be used for everything from dividend distribution to a reduction of share capital.

Under the new provisions, a company satisfies the solvency test if:

- the company is able to pay its debts as they become due;
- the value of the company's assets is greater than the value of its liabilities; and
- in the case of a supervised company, it satisfies the various requirements laid down in other applicable laws.

The new test adds certainty and consistency.

■ Company Takeovers

New squeeze-out provisions allow a proposed purchaser with 90% acceptances to compulsorily acquire the remaining shares.

■ Amalgamation and Migration of Companies

The Companies Law simplifies procedures for amalgamating and migrating companies in or out of Guernsey by abolishing the requirement for a court application.

■ Dividends and Distributions

Dividend payments are no longer limited to profits set aside for such purpose. Distributions can be made or paid provided that any requirements set out in the company's memorandum and articles are fulfilled and the company satisfies a solvency test.

■ Arrangements and reconstructions

The Companies Law facilitates compromises and arrangements between a company and its creditors (or any class of them) or its members (or any class of them). Subject to agreement of a 75% majority of the creditors or members, the Royal Court may sanction the compromise or arrangement.

The Specialist Fund Market

The London Stock Exchange announced the launch, in November 2007, of the Specialist Fund Market (SFM), a dedicated market for issuers of specialist funds. The SFM is designed to bridge the gap between AIM and the London Stock Exchange's Main Market (Main Market).

The SFM is designed to provide flexibility for specialist vehicles such as hedge funds, feeder funds and private equity funds. Investment entities will now have wider options for listings on London Stock Markets. Guernsey funds will be able to choose between the Main Market, AIM and the new SFM.

Both UK and non-UK domiciled entities are eligible to seek admission to the SFM. However, the SFM is not intended as an admission route to a regulated market for investment entities that are intending to make a retail offering.

The principal beneficiary of this new market in terms of the fund's domicile, is likely to be Guernsey, given the current preference to establish offshore London listed funds in Guernsey.

Admission Process

The admission requirements for entry into the SFM are less onerous than those for listing on the Main Market. In particular, securities do not need to be approved for public notification on the Official List as a prerequisite to admission to the SFM.

Admission is a two-stage process for Guernsey investment entities:

- the approval of a prospectus by the applicant's competent authority; and
- subsequent application to the London Stock Exchange for admission to trading on the SFM.

Investment entities wishing to transfer to the SFM from AIM will generally be required to produce a prospectus for approval by the GFSC prior to the application for admission to the new market.

To find out more about listing Guernsey entities on AIM or SFM or related issues of Guernsey law, please contact:

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