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The Use of Guernsey Companies in “Cash Box” Transactions

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Current market conditions have severely restricted the ability of many UK companies to obtain debt finance to fund their activities, particularly mergers and acquisitions. These conditions have equally led to the fall in the price of many assets, however, and as a result some corporate entities have turned to the equity markets in order to raise the funds necessary to take advantage of these favourable asset prices.

Equity Finance - Cash Placings

Where shares in a UK PLC are allotted for consideration that is paid in cash the company must comply with the statutory pre-emption rights under section 561 of the Companies Act 2006, which requires the shares to be offered pro rata to existing shareholders.

The problem for companies in this case is that uptake of the shares by existing shareholders may not be at a sufficient level to raise the funds necessary, particularly if a substantial acquisition is proposed.

Of course statutory pre-emption rights may be disapplied under section 569 of the 2006 Act, however, this requires a special resolution to be passed by the shareholders. If there is significant shareholder dissent this may not be possible. Further, obtaining shareholder consent may not in fact be desirable in any case due to the expense and delay likely to be incurred by the company, and the potential loss of confidentiality concerning the proposed use of the funds.

In addition there is a recommended maximum limit on the annual disapplication of statutory pre-emption rights in relation to publicly listed companies. This limit is detailed in the pre-emption guidelines published by the Pre-Emption Group and although not legally binding is considered to be strongly persuasive by many companies.

This limit is currently set at 5% of the issued ordinary share capital of the company and there is a cumulative limit of 7.5% applicable over three years. Even if shareholder consent is obtained and statutory pre-emption rights are disapplied, it may not be possible for a

listed company to raise sufficient funding by way of cash placing if they wish to abide by the pre-emption guidelines.

Cash Box Transactions

The above issues concerning statutory pre-emption rights do not apply, however, where equity securities are allotted for consideration paid wholly or partly otherwise than in cash (Section 565 Companies Act 2006). The structure of the cash box transaction takes advantage of this exception and enables a UK PLC to issue new shares, and raise finance, without the implications of compliance with the pre-emption provisions. Where a cash box transaction is utilised and shares are issued which represent less than 10% of the current issued share capital of the PLC the company can also avoid the need to prepare listing particulars or a prospectus.

Cash Box Companies

A cash box company is a new company which is incorporated in an offshore jurisdiction, such as Guernsey, but managed, controlled and resident in the United Kingdom. The majority of the ordinary shares of the cash box company will be held by the UK PLC, although if merger relief is to be obtained under section 613 of the Companies Act 2006 not less than 10% of the ordinary shares must be subscribed for by the underwriting bank.

Residency in the United Kingdom avoids the need for HM Treasury consent for the issue or transfer of shares by the cash box company and there are also several tax advantages associated with incorporation of a company in Guernsey. The corporate tax rate in Guernsey is 0% (save for certain banking, utilities and property development activities undertaken in Guernsey) and therefore the use of a Guernsey cash box is tax neutral.

In addition there is no capital gains tax, corporation tax, V.A.T or other withholding tax payable in Guernsey and no stamp duty is imposed on the transfer of shares.

Incorporation of a cash box company in Guernsey also provides a number of other non-tax advantages, which are detailed below.

Structure of a Guernsey Cash Box Transaction in Brief

1. The UK PLC commissions the incorporation of a new company in Guernsey, with an ordinary share capital which the PLC subscribes for (the cash box company).
2. The cash box company agrees to issue redeemable shares to the PLC's bank on terms set out in a share subscription and transfer agreement.

This agreement provides that the bank will transfer the redeemable shares in the cash box company to the PLC. The amount paid up on these shares will be equal to the proceeds realised in relation to the ordinary shares of the PLC, which will be placed by the PLC to persons nominated by the bank, less any commission or expenses payable to the Bank.

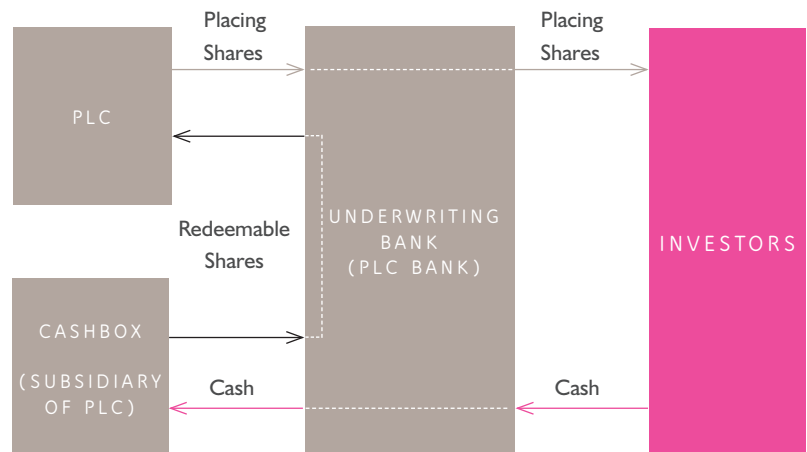
3. At completion the redeemable shares of the cash box company are allotted to the bank and the ordinary placing shares of the PLC are simultaneously allotted to the investors as nominated by the bank.
4. Consideration for the placing shares of the PLC is paid by the investors to the bank and these monies are used by the bank as consideration for the allotment of the redeemable shares of the cash box company, thereby funding the cash box.
5. The bank transfers the redeemable shares of the cash box company to the PLC in consideration of the allotment to the investors and the PLC thereby holds the entire issued ordinary and redeemable share capital in the cash box company without any pre-emption rights issues having occurred.
6. At this stage the PLC may realise the funds held by the cash box company, either by way of a loan from the cash box company to the PLC, by redeeming the shares or by winding up the cash box company and distributing the funds to the PLC as the sole shareholder.

Advantages of Using a Guernsey Cash Box Company

- Guernsey company law is up-to-date, modern and based on similar principles to the UK law.
- Guernsey companies are incorporated on a bespoke rather than "off the shelf" basis, enabling UK management and control from the start, and can be incorporated within a short period of time: if necessary incorporation can be effected within the hour.
- A Guernsey company does not require a Guernsey resident director or shareholder and meetings can be held outside of the island allowing the company to be controlled from the UK whilst maintaining a registered office in Guernsey.
- Unlike a UK company a Guernsey company can redeem shares from any source of funds, including share capital and can also issue no par value shares.

In light of the above, cash box structures are increasingly being used as an efficient way of raising equity funding without the requirement for compliance with UK statutory pre-emption requirements. As discussed, the use of Guernsey companies as cash boxes affords many tax and non-tax related benefits.

Snapshot of a Cashbox Transaction



This note does not purport to give advice as to matters of UK law or taxation. Further advice should be sought as to matters of UK law and any tax consequences of such transactions.

If you have any questions on the use of Guernsey companies in cash box transactions please contact Ian Kirk or Paul Wilkes

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