Walkers

The Benefits of Guernsey and Jersey companies for UK and US listings

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Guernsey and Jersey companies have been a mainstay on the LSE for many years – and the same have also been used for listings on NYSE and NASDAQ, as well as other stock exchanges in Europe, North America and Africa. This note considers the key features of Guernsey and Jersey company law and the wider regulatory regime which makes these jurisdictions popular for companies seeking admission of their shares to listing and/or trading on LSE, NYSE and NASDAQ.

Guernsey and Jersey companies on international exchanges

It is difficult to predict where financial markets are headed, but there are reasons to be optimistic that IPO activity could start to gather momentum again, and listing Guernsey and Jersey companies brings with it a number of benefits.

One of these is that there is a solid track record. As at the date of this note, in terms of listings on the LSE, after UK companies, Guernsey and Jersey companies respectively make up the second and third biggest groups of listed companies – in total this is over 150 listed companies.

In addition, Guernsey and Jersey companies are approved for listing on additional markets including the Chicago Stock Exchange, the Johannesburg Stock Exchange, and NYSE Euronext Paris.

Advantages of Guernsey and Jersey companies for international listings

Flexible corporate law regime

Guernsey and Jersey have modern company law regimes giving wide flexibility to create corporate structures tailored to investors' needs. One of the main reasons that several hundred billion dollars' worth of public companies on international exchanges around the world have chosen to use Guernsey and Jersey companies is the flexibility of these jurisdictions' companies law regimes, which are based on English law – and therefore familiar to onshore counsel in London, with some key benefits, including:

- **Distributions and buybacks**: there is no concept of 'distributable reserves' under Guernsey and Jersey law and distributions can be funded from any account of the company (other than, in Jersey, a nominal capital account or capital redemption reserve account) so long as the directors approving the distribution are satisfied that the company will be able to carry on its business and discharge its liabilities immediately following the date on which the distribution is proposed to be made (and will continue to be able to do so for the next 12 months after this). This solvency-based process is the same for the repurchase of its own shares by a company. The ability to fund distributions (and repurchase of shares) in this way is an advantage when compared with companies incorporated in other jurisdictions which are subject to more stringent capital maintenance requirements. This is particularly attractive to a listed company seeking to adhere to a consistent dividend payment schedule (which, in turn, can also be helpful to any scrip dividend option which the company has implemented). It also enables directors to have greater flexibility to implement buyback programmes, should they wish to do so.

- **No statutory pre-emption rights**: There are no statutory pre-emption rights under Guernsey or Jersey law, which means that the constitutional documents can be tailored to add in provisions suitable for companies listing on the LSE, or any other stock exchanges.

- **Disclosure obligations and mandatory offer provisions**: Guernsey and Jersey law do not impose any requirements on companies (including those admitted to listing and/or trading) with regard to disclosure obligations on ownership of shares or in respect of any mandatory offer regime. As a result, Guernsey and Jersey companies are free to tailor their constitutional documents to reflect the relevant rules of the stock exchange. For example, it is common to see the provisions of s.793 of Companies Act 2006 incorporated into the articles of incorporation/association companies listed on the LSE and other European exchanges.

- **Options for exit**: Guernsey and Jersey law offer a variety of methods to implement a take private transaction. In addition to takeover bids and members' schemes of arrangement (which are also available under English law) it is possible under Guernsey and Jersey law to implement a take private transaction under the merger provisions of each jurisdiction's company law regimes. Indeed, we see this method for implementing a take private transaction as becoming increasingly popular, particularly in Jersey.

Robust financial services infrastructure

Besides the favourable corporate law regime, Guernsey and Jersey offers other benefits for international listings, including:

- **Co-operative and experienced regulators**: In Jersey, an admission document circulated prior to the listing of shares of a Jersey incorporated company is likely to constitute a prospectus under Jersey law and accordingly the consent of the Registrar of Companies in Jersey (Registrar) must be sought prior to its circulation. Any prospectus must contain certain disclosures and investment warnings which are not particularly onerous and will be familiar to professionals in the equity capital markets space. The Registrar is experienced in reviewing and approving prospectuses and as a result the application process is efficient and the required consent can be expected within five business days. In Guernsey, there is no requirement to comply with Guernsey's prospectus regime where the shares offered under a prospectus are listed on certain recognised stock exchanges (which includes the LSE, NYSE and NASDAQ).

- **Ease of trading**: shares in Guernsey and Jersey companies listed on the LSE are eligible for trading and settlement through CREST without the need for CREST depositary receipts. Likewise, the shares of Guernsey and Jersey companies listed in New York (on NYSE and NASDAQ) can be traded and settled in dematerialised form.

- **Favourable tax treatment**: Importantly, no stamp duty is payable on the transfer or issue of shares in Guernsey and Jersey companies. In addition, in the case of Guernsey and Jersey companies which are tax resident in these jurisdictions, such companies will likely be either exempt from tax or subject to a rate of income tax at zero per cent (though certain businesses may be taxed at 10 per cent or 20 per cent). Companies in Guernsey and Jersey are not required to make any withholding or deduction on the payment of dividends or interest payments to non-Guernsey/Jersey resident shareholders or lenders. In addition, Guernsey and Jersey companies can migrate their tax residence out of their jurisdiction of incorporation to another jurisdiction, such as the UK. This makes Guernsey and Jersey ideal jurisdictions for UK Real Estate Investment Trusts (REITs) which need to be UK tax resident and, crucially, not resident in any other jurisdiction.

The Takeover Code and UK Corporate Governance Code

The UK City Code on Takeovers and Mergers (the **Code**) applies if any of the securities of a Guernsey or Jersey company are admitted to trading on a regulated market or multilateral trading facility in the UK or on any stock exchange in the Channel Islands or the Isle of Man. The Code may also apply to Guernsey and Jersey companies in certain other circumstances, such as where the relevant shares have been admitted to trading in the previous 10 years (although we note that these provisions of the Code are currently under review).

The Code is a constantly evolving framework designed, amongst other things, to offer investor protection which is a desirable objective as far as many investors are concerned. It is worth noting that the UK Corporate Governance Code applies to all companies with admitted to the LSE's Premium Main Market, whether incorporated in the UK or elsewhere, and so choosing to incorporate in Guernsey or Jersey will still offer investors the reassurance of good corporate governance standards.

Summary

Walkers' corporate and investment funds team have advised on numerous IPOs of Guernsey and Jersey companies and funds, as well as a wide range of other equity capital market transactions involving listed vehicles on various stock exchanges worldwide.

The equity capital markets experience within the team is supplemented by extensive public M&A expertise. Our team is supported by specialist funds, regulatory, finance and dispute resolution practice groups, enabling us to offer a full service to financial services clients across all matters under Guernsey and Jersey law.