Benefits of Using a Jersey Company

For many corporate entities, lenders and onshore counsel, Jersey is the offshore jurisdiction of choice. The provision of corporate advice and related services represent a core business of Voisin.

Jersey companies are used in a wide range of transactions, such as:

- Investing in property, securities and other assets
- Acting as a group holding company
- Holding and exploiting patents and copyrights
- Facilitating the collection of commissions and consultancy fees
- Employing an internationally based work force

Jersey is a tax neutral jurisdiction and using a Jersey company for structuring international financing transactions can be beneficial in terms of company law provisions and tax treatment. Additional benefits include separate legal identity, limited liability for shareholders and ease of transfer of ownership. Share capital can be denominated in any currency and issued in various classes, including redeemable shares. The ability to incorporate "no par value" companies has added yet more flexibility. These features enable Jersey companies to be structured to meet a wide variety of business purposes.

The principal piece of legislation governing Jersey companies is the Companies (Jersey) Law, 1991 (the "**Companies Law**"), which is a comprehensive, modern statute governing all aspects of the regulation of the formation and administration of private companies in Jersey.

Incorporation of Jersey Companies

Incorporation of a Jersey company is commenced by the payment of a fee accompanying an application to the Registrar of Companies. As at October 2016, the fees charged by the Registrar of Companies for incorporation of a Jersey company (or a cell of a Jersey company) are based on the following sliding scale: (i) £150 for incorporation within 5 business days; (ii) £200 for incorporation within 3 business days; (iii) £250 for incorporation within 2 business days; (iv) £350 for incorporation within 1 business day; and (v) £550 for incorporation within 2 hours.

The application to the Registrar of Companies is made by the subscribers to the Memorandum of Association of the company (i.e. its proposed first shareholders) and includes the Articles of Association, together with details of:

- The proposed name;
- The proposed first shareholders;
- The first directors;
- The authorised share capital;
- The type of company (public or private, par value or no par value, etc...);
- The proposed activities / intended use; and
- The ultimate beneficial ownership of the company.

The Articles of Association registered upon incorporation can include any entity specific provisions such as classes of shares, rights attaching to shares, dividend and voting rights, rights to winding up or return of capital, appointment and removal of directors and pre-emption rights. Alternatively, "plain vanilla" Articles can be registered initially and then amended by special resolution (a resolution passed by a majority of not less than two-thirds of shareholders entitled to vote at general meetings).

As is to be expected with all reputable financial centers, Jersey has regulations regarding client due diligence requirements. A questionnaire will need to be completed together with the requisite due diligence in relation to, typically, the directors and beneficial owners of the company. Any information so obtained does not become publicly available. The questionnaire will include disclosure as to the proposed activities of the company which will be forwarded to the Registrar of Companies as any sensitive activities which may pose a potential risk to the reputation of Jersey will require specific consent before incorporation.

As part of the incorporation process consent must be obtained under the Control of Borrowing (Jersey) Order, 1958 ("**COBO**"). COBO, amongst other things, regulates the issue by Jersey entities (whether companies, limited partnerships, unit trusts, etc…) of shares, units, interests and other securities. All Jersey companies must therefore obtain prior approval in the form of a COBO consent to the issue of shares. Application for such consent is submitted to the Jersey Financial Services Commission together with the incorporation documentation.

Jersey Company Structures

The following company structures are available in Jersey:

Limited Companies

Companies whose members' liability is limited to the amount unpaid on their shares.

Unlimited Companies

The liability of the members of unlimited companies on a winding up of the company is unlimited.

Guarantee Companies

The liability of members of guarantee companies is limited to the amounts they guarantee.

Cell Companies

Cell companies are companies which, once established, have the ability to create cells separate from themselves, each of which may hold separate assets (and liabilities), therefore enabling the assets and liabilities of each cell to be isolated from the assets and liabilities of the cell companies themselves and of any other cells. This creates statutory "ring fencing" of assets. The Companies Law permits the incorporation of two types of cell companies, protected cell companies and incorporated cell companies.

Limited Life Companies

Jersey companies may be incorporated with a limited or set period of existence. On incorporation, the company's "lifespan" is defined by specifying a liquidation date in the Articles of Association, or by specifying the occurrence of a particular event. Such companies are granted favourable treatment by a number of revenue authorities in that they are regarded in the same manner as a partnership (as opposed to a corporation).

Limited companies (including cell companies) are by far the most common type of Jersey company and this Briefing Note focuses on such companies.

Par Value Shares or No Par Value Shares

Jersey companies may be incorporated with either 'par value' shares or 'no par value' shares (companies cannot have both).

As the name suggests, par value shares have a par or nominal value.

No par value shares have no par or nominal value, nor are they denominated in any currency, and the number of authorised no par value shares can be (but does not have to be) unlimited. Save for those distinctions, no par value shares have the same features as par value shares, with their rights set out in the Articles of Association.

The key difference between a par value and a no par value share is an accounting one. Sums paid up on no par value shares are credited to a company's "stated capital account", instead of having a nominal share capital account and a share premium account as you would with a par value company.

Formalities

Registered Office

The registered office of a Jersey company must be located in Jersey. Voisin acts for a number of local and international businesses based in Jersey who provide the full range of company administration services (which are regulated activities within Jersey).

Directors

A private company must have at least one director and a public company at least two. Directors' meetings can, but need not, be held in Jersey and the directors themselves can, but need not be, resident in Jersey. Directors may be individuals or, subject to certain restrictions, corporate entities.

Shareholders

A private company is permitted to have just one shareholder, a public company must have at least two (who may be nominees for a single beneficial owner), unless of the issued shares of that public company are held by or by a nominee for a holding body.

General Meetings

A private company has the ability to dispense with the need to hold an annual general meeting, a public company may not.

Auditors

All companies are required to keep adequate records sufficient to show their financial position. Only public companies are required to have auditors.

Requirement to Prepare Accounts

The Companies Law requires that accounts be prepared for all Jersey companies. Subject to the terms of the consent given by the Registrar of Companies on incorporation of a company, only public companies need file their accounts with the Registrar. Companies that are subject to tax in Jersey must file their accounts with the Income Tax Department.

Annual Return

A company must submit an annual return before the end of February in each year giving certain details of its share capital. For public companies information must also be supplied regarding its directors.

Registers

A Jersey company must maintain registers of directors and shareholders. There is no requirement to maintain a register of mortgages and charges.

Distributions, Share Buyback and Redemptions

- The Companies Law allows a Jersey incorporated company to make a distribution from any source, not merely from distributable profits; but the directors of a company have to certify the solvency of the company at the time of the distribution.
- A distribution made by a Jersey company may be debited from a share premium account (in the case of a par value company), or a stated capital account (in the case of a no par value company) or any other account of the company, other than the capital redemption reserve or the nominal capital account.
- Recent changes to the Companies Law now permit fully paid up limited shares of both par value and no par value companies to be redeemed or bought back from any capital source.

Transaction Specific Consents

If a Jersey company intends to carry out a business which is regulated in Jersey, further consents or approvals may be required. Areas where consents of this type might be required are collective investment funds business, financial services business, banking business and trust company business (as well as certain sensitive activities already mentioned above). Voisin are able to advise you on the necessity for any such consents at the preliminary discussion stage of any transaction.

Administration of Foreign Companies in Jersey

Companies registered in other jurisdictions may be managed and controlled from and establish an administrative office in Jersey. Many such jurisdictions permit corporate directorships. Such companies are subject to the same zero/ten tax regime that applies to Jersey incorporated companies.

Public Companies

A company is a public company if it has more than thirty shareholders or the memorandum of Association states that it is a public company. In addition to the distinguishing feature mentioned above, the following are the principal differences between private and public companies:

- Only a public company may issue a prospectus inviting the public to acquire or apply for securities;
- The registers of directors and shareholders of a public company may be inspected by the public;
- The secretary of a public company must hold appropriate qualifications specified in the Companies Law;
- The accounts and auditors' report of a public company must be presented before a general meeting of the company, and filed with the Register of Companies, within seven months of the end of the company's financial year.

Taxation of Jersey Companies

All Jersey resident companies are charged to Jersey income at 0%, save for (a) Jersey regulated financial services companies (which are charged to Jersey income tax at 10%); or (b) Jersey utility and property income companies (which are charged to Jersey income tax at 20%). Accordingly no deduction should be made in respect of Jersey income tax from dividend or interest payments made by a Jersey company.

For further information or specific advice on the use of Jersey companies, please contact Ian Strang or Jeffrey Giovannoni of Voisin.

This note is intended to provide a brief rather than a comprehensive guide to the subject under consideration. It does not purport to give legal or financial advice that may be acted or relied upon. Specific professional advice should always be taken in respect of any individual matter.