COLLAS CRILL

Capital markets: Why offshore

AUGUST 2018

Companies incorporated in offshore finance centres make up a significant portion of the companies listed on many international securities exchanges around the world. Looking at the most commonly used jurisdictions of Guernsey, Jersey, Cayman Islands and the BVI, they presently contribute over 270 companies to the London Stock Exchange and have significant presences on exchanges including New York, Toronto, Hong Kong, Frankfurt and Singapore.

When considering the place to establish your company for raising capital on the international markets, offshore financial centres can provide a number of advantages.

For any company looking to list shares on a securities exchange, it can often be a quick and easy decision to list the existing company's own shares or the shares in a newly established 'onshore' company. However, it is often the case that both the company looking to raise capital and its targeted investors can benefit from establishing a new listing vehicle in an offshore jurisdiction.

Companies incorporated in each of Guernsey, Jersey, Cayman Islands and the BVI (each a **Relevant IFC**) benefit from the standard tax benefits which you would associate with tax neutral offshore finance centres. Neither the company's income or capital gains, nor any interest or dividend payment made by it, is subject to any tax in its jurisdiction of incorporation. In addition, there are no stamp duty or other taxes applicable in the Relevant IFC for the transfer of its shares. Consequently, the full value of the company's profits and increases in the value of the company's shares can be passed on to its investors in full, and subject only to the investors' personal taxes.

In addition to the well know tax benefits though, companies incorporated in a Relevant IFC also provide the following advantages:

1. **Simplified company law**

Each Relevant IFC offers a simplified company law, based on English company law concepts, designed to give the maximum flexibility to the company while also providing sufficient shareholder safeguards where desired.

This can provide significant annual cost savings to the company when compared to the more complex 'onshore' regimes. Whereas the ability to adopt more sophisticated corporate governance provisions within its constitutional documents allows companies to adopt the more complex provisions either at the time of listing or if and when required in the future.

2. **Distributions**

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

Unlike many onshore jurisdictions, the Relevant IFCs, do not require distributions to be paid from profits or distributable reserves. Distributions may be paid from a wide range of sources including share premium. To protect creditors, in each Relevant IFC the directors who authorise a distribution must be satisfied that the applicable statutory solvency test will be satisfied.

Not only does this allow greater flexibility for meeting its investors' requirements, it also has the added benefit of saving the time, cost and expense of obtaining accountants and auditor reports as to the nature of the company's income and the availability of profits prior to approving a dividend or other distributions (including for the buy back of shares or other securities).

3. **No Statutory pre-emption rights**

There are no statutory pre-emption rights, either on the issue of shares or the sale of treasury shares, in any Relevant IFC. Pre-emptive rights can, of course, be included within the company's articles of association if desired.

4. **Investor familiarity**

Each Relevant IFC is respected as being a well regulated and internationally cooperative jurisdiction.

Given the common use of companies incorporated in the Relevant IFCs as listing vehicles and their application of predominantly English law principles, many international investors are familiar with, and comfortable investing in, companies incorporated in the Relevant IFCs.

5. **Flexibility for the future**

By utilising an offshore company as the holding company for your group, this leaves the option open to re-domicile the company to another jurisdiction in the future. This is not typically an option open to companies in onshore jurisdictions, save where the more expensive route of a scheme of arrangement is used.

Alternatively, should it be beneficial either at the time of listing or in the future for the company to be subject to tax in an onshore jurisdiction, it would be possible to establish the tax residency of the company in that jurisdiction, whilst not being subject to any double taxation in the Relevant IFC.

6. **Service providers**

Each Relevant IFC boasts a wealth of experienced service providers, including international law firms, international accounting firms and corporate service providers.

For more information as to how you or your client's company and its investors could benefit from accessing the international capital markets by using a company incorporated in a relevant IFC, please get in touch.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

COLLAS CRILL

For more information please contact:



Simon Heggs

Group Partner* | Guernsey

t: +44 (0) 1481 734825 | **e:** simon.heggs@collascrill.com

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.