

A guide to structured finance and securitisation in Jersey

Briefing Summary: This short guide provides a high-level overview of structured finance and securitisation in Jersey. Should you require further information or professional advice please get in touch with one of the key contacts listed on this page.

Service Area: Banking and Finance, Structured Finance and Securitisation

Sector: Banking

Location: Jersey

Created Date: 15 May 2024

Carey Olsen is a market leader in structured finance and securitisation in Jersey.

Clients of the structured finance and securitisation team include issuers, trustees, companies and global investment banks who we advise on the full range of structured finance and securitisation transactions.

Clients value our experience in relation to structures involving a range of asset classes, including residential mortgages, consumer loans and credit cards.

The team has worked on numerous master trust structures and advised on whole business securitisations and securitisations involving specific business assets and unusual asset classes. The team has also worked on all of the recent synthetic CLN structures involving Jersey issuers established for UK banks.

Clients also appreciate our responsiveness and swift turnaround times. We are accustomed to working with the structured finance and securitisation teams of major international law firms and we maintain a commitment to the highest standards of service that are expected.

Jersey company basics

- Governed by Companies (Jersey) Law 1991 ("CJL")
- Full capacity without long form memorandum

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- Company can have:
 - par value shares
 - no par value shares
 - shares denominated in any currency
 - guarantor members
 - unlimited members
- Flexible capital maintenance rules govern return of capital / redemption of shares / repurchase of shares
- Will be public company if more than 30 shareholders, if it circulates prospectus to the public or if it is a 'market traded company'
- CJL provides for migration of Jersey companies to other jurisdictions and vice versa
- No minimum capital requirement
- Company must have:
 - a registered office in Jersey
 - a company secretary (who can be corporate and need not be Jersey resident)

Formation process

- Obtain name approval
- Deliver to Registrar of Companies ("Registrar") statement of particulars, memorandum and articles and fee
- Obtain consent of Jersey Financial Services Commission ("JFSC") to issue shares pursuant to Control of Borrowing (Jersey) Order 1958 ("COBO")
- Registration fee is £200 (for incorporation within 5 business days)
- Shorter incorporation periods available for additional fees (e.g. 'Fast track' incorporation within 2 hours for £820 registration fee)

Directors

- Public company must have at least two directors
- Private company must have at least one director
- Director may be natural person or corporate (provided certain conditions are satisfied)
- Directors need not be Jersey resident
- Duties similar to UK
- Written resolutions and telephone meetings possible

Shareholders

- Public company must have at least two shareholders unless wholly-owned subsidiary
- Private company may have one shareholder
- Details of registered (not beneficial) owners are public information – use of nominees is common
- No bearer shares
- Limited liability principles similar to UK
- Written resolutions and telephone meetings possible

Company administration

- Must file confirmation statement by 28 February
- Annual confirmation fee of between of £330
- Public company must prepare and file annual audited accounts (£150 filing fee)

Typical transaction regulatory consents

- Consent of JFSC under COBO to issue shares / trust interests / debt securities
- Consent of Registrar to circulate prospectus where Jersey issuer or prospectus is circulated in Jersey
- Prospectus safe harbours equivalent to UK and EU available for Jersey issuers
- Financial services legislation may apply

Orphan structure

- Trustee can hold shares in Jersey company on charitable trust

Cell company

- Cell company may be:
 - protected cell company - cost effective and flexible
 - incorporated cell company - each cell a company, so exceptionally robust

Jersey security

- Jersey situs intangible movable assets ("Jersey intangibles") secured by means of Jersey security interest agreement
- Jersey intangibles include Jersey bank accounts, contractual rights against Jersey company or individual and shares in Jersey company
- Possible to take security over all present and future Jersey intangibles
- Wide powers of enforcement available
- Possible and in some cases essential to register security over Jersey intangibles
- Power of attorney must be expressed to be irrevocable and given in connection with security to survive insolvency
- Different rules relate to Jersey real and tangible movable property

Insolvency

- Assets of company can be declared *en désastre* (bankruptcy procedure)
- Company can be subject to creditors' winding up (insolvent winding up procedure) instigated by either (a) eligible creditors or (b) shareholders
- Statutory rules dealing with transactions at undervalue, preferences and onerous property
- Security respected on insolvency
- Concept of administrator or receiver not recognised domestically

- Limited recourse and non-petition language effective

Share transfer

- Share transferred when details entered in share register
- No requirement for stamping or for registration with JFSC (but prior consent required in some cases)
- In most cases corporate service providers deal with updating JFSC beneficial ownership register
- No statutory pre-emption rights

Execution of documents

- Company may have seal
- One director may be sufficient for execution of all documents depending on memorandum and articles of association
- Generally no filing stamping or registration requirements

Anti-money laundering

- Institutions (including banks and company administrators) are obliged to adopt internal procedures that meet standards laid down in Money Laundering (Jersey) Order 2008 principally
- Strict 'know your client' ("KYC") rules - detailed personal information is likely to be requested on officers, beneficial owners and controllers. Relaxed rules relate to quoted companies but KYC applies to designated officers dealing with transactions

The International Stock Exchange (TISE)

- A recognised stock exchange under UK tax legislation
- Streamlined listing rules for specialist securities, including asset backed securities, variable funding notes and collateralised loan obligations
- Exchange committed to fast document turnaround and the Listing and Membership Committee meets daily

Tax environment

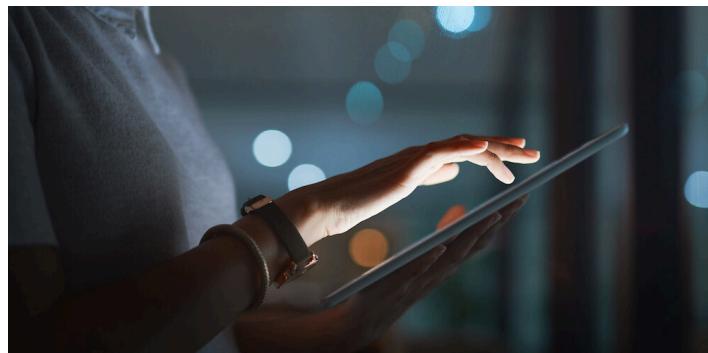
- No capital gains tax
- No stamp duty (except for Jersey real property)
- No capital duty
- Zero corporate tax rate will apply to majority of SPVs
- If foreign tax resident where highest rate of corporate tax is 10% or higher, company is treated as not tax resident in Jersey
- No withholding tax
- Meets international standards on tax transparency, fair taxation, anti-BEPS measures, legal substance requirements and information exchange
- The Government of Jersey have given a commitment to implement the OECD's Pillar Two Income Inclusion Rule and domestic minimum tax from 2025

Data protection and consumer credit

- Data protection legislation similar to UK's
- Minimal consumer credit legislation

Carey Olsen Jersey LLP is registered as a limited liability partnership in Jersey with registered number 80.

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