

Why use Guernsey entities in structured finance transactions and restructurings?

Briefing Summary: With reassuringly familiar corporate and insolvency regimes, a preferential tax regime, and located in the same time zone as London, Guernsey entities are popular across many different types of structured financing transactions and restructurings. This briefing discusses some of the more and less well-known benefits to using Guernsey entities in these types of transactions.

Service Area: Banking and Finance, Structured Finance and Securitisation, Restructuring and Insolvency

Location: Guernsey

Created Date: 29 January 2025

Guernsey is a leading international finance centre in many key markets, with over £280bn net asset value of its regulated funds, over £5bn net asset value of green funds, the number one jurisdiction for LSE-listed funds outside of the UK, and the number one domicile for captives in Europe¹. It has also for some time been the number one choice for non-UK companies listing on the main market of the London Stock Exchange and Alternative Investment Market, with over a third more listings than its nearest competitor².

As a result of its popularity as an international finance centre, Guernsey companies are commonplace across a broad range of structured finance and securitisation transactions (including, amongst others, CDOs, CLOs, mortgage-backed securities, debt financing, bond offerings, mezzanine financing, secured loans, sovereign bonds, synthetic securitisations and whole business securitisations) and as a result are familiar to both issuers and investors.

Types of Guernsey entities

Guernsey has a wide range of entities which may be used to provide flexibility in financing transactions, from more familiar entities like non-cellular companies (broadly equivalent to a private company in the UK) limited partnerships, and unit trusts, to less familiar innovations like protected or incorporated cell companies and their cells which allow for statutory ring-fencing of assets and liabilities within a single legal entity. For brevity, this briefing focuses on the use of non-cellular Guernsey companies in structured financing transactions.

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Compliance with international standards

Guernsey was within the first wave of jurisdictions placed on the Organisation for Economic Co-operation and Development 'white list' in April 2009. In January 2011, IMF commended Guernsey's high standards of financial regulation, supervision, stability and criminal justice framework.

Guernsey adheres to the highest standards of international tax and regulatory principles and is committed to ensuring that this continues. Guernsey has given its full support for the transparency principles central to the current G20, OECD and EU tax initiatives and is working as part of the wider international community in the development and effective implementation of internationally agreed standards, including those set by the Financial Action Task Force ("FATF") and the Organisation for Economic Co-operation and Development.

Guernsey has been assessed as being amongst the best quality financial centres in the world when measured against the rigorous international standards for tackling money laundering and terrorist financing set by the FATF.

Guernsey also participates fully in numerous international initiatives such as the OECD's base erosion and profit shifting project and developing the global "Common Reporting Standard" and the automatic exchange of information between tax authorities.

Further information on the Guernsey and international tax and regulatory standards.

Taxation

- *Stamp duty*: no stamp duty or similar tax is chargeable in Guernsey on the issue, transfer or redemption of shares in a Guernsey company, save for in limited circumstances where the company were to holds rights in relation to Guernsey-situs real property.
- *Income Tax*: Guernsey companies typically pay income tax at 0%, and collective investment vehicles can also benefit from income tax exemption.
- *Withholding Tax*: Guernsey does not levy withholding tax on dividends and other distributions paid to companies or non-Guernsey resident persons and does not levy withholding tax on interest.
- *Taxes on capital*: Guernsey currently does not levy taxes upon capital, inheritances, capital gains, gifts, sales or turnover, nor are there any estate duties (save for registration fees and ad valorem duty for a Guernsey grant of representation where the deceased dies leaving assets in Guernsey which require presentation of such a grant).
- *Check the box*: we understand that it is possible to check the box for US tax purposes.

Simple incorporation

Guernsey companies can be established quickly once the relevant information is provided, as fast as 15 minutes in certain cases (however both the 2-hour process and the 24-hour process are more commonplace). Companies may be established with a single shareholder, there are no minimum capital requirements, and incorporation fees are low.

Advantageous regime

Guernsey's Company law will be familiar to those versed in English Company law, but it also contains certain additional flexibility, including:

- **Distributions:** Guernsey law uses a solvency-based test for distributions, meaning that distributions may be made from any source and the test to be considered by directors instead considers whether the relevant company satisfies the solvency test before and after making the distribution. As a result, Guernsey companies are not required to keep separate 'distributable reserves' or 'profits available for distribution' and distributions may be made from any account (nor does Guernsey law distinguish between share capital and share premium for these purposes).
- **Redemptions and repurchases:** Redemptions and repurchases are similarly solvency-based and may be funded from any source. Both are quick simple processes under Guernsey law, with repurchases approved by way of an ordinary shareholder resolution (whether on-market or off-market) and redemptions approved by way of a simple board resolution (assuming the shares to be repurchased were issued on such terms).
- **Financial assistance:** Guernsey companies may provide financial assistance, subject to approving it as a distribution in the usual way (including considering the solvency test).
- **Flexible constitution:** Guernsey company law offers a number of different corporate vehicles providing a flexible framework that enables capital structures to be tailored to the specific needs of investors. Furthermore, Guernsey company law omits aspects of company laws from other jurisdictions that investors find problematic or restrictive. Investor protections can be 'hardwired' into the relevant constitutional documents as required, whilst shareholder agreements can be governed by English (or any other) law and prepared in a way that will not require them to be filed publicly. Guernsey companies also have full corporate capacity, unless specific provisions restricting them are included in their memorandum of incorporation.
- **Pre-emption rights:** There are no statutory pre-emption rights on share issuances or transfers in Guernsey.
- **Choice of GAAP:** Guernsey companies are free to select any generally accepted accounting principles for the preparation of their accounts, which must be prepared for each financial year and give a true and fair view of the affairs of the company. Company accounts are not filed publicly in Guernsey, and the majority of Guernsey companies are able to exempt themselves from having their accounts audited.

- **Flexible reorganisations:** Guernsey allows many options in respect of corporate reorganisations, including migrations, amalgamations, restorations, schemes of arrangement (whether by a company's shareholders or its creditors), and conversions to cell companies or a different liability type.
- **Debt issuances:** unlike some other offshore jurisdictions, Guernsey companies do not require regulatory consent to issue debt securities.
- **Directors:** directors of Guernsey companies are not required to be resident in Guernsey. Directors' duties in Guernsey are not codified in statute, but are instead based on the English common law duties which were in place prior to their codification in the Companies Act 2006. Corporate directors are also commonplace.

Bankruptcy remoteness, security, and insolvency

- **Orphan structures:** Guernsey law allows for both charitable and non-charitable purpose trusts, and orphan structures and off-balance sheet structures in Guernsey are therefore commonly-structured by use of a purpose trust to hold the share capital of a Guernsey SPV, with only a small profit needed to be generated by the Guernsey SPV.
- **Contractual provisions:** subject to certain customary law rights (which can be waived) most common English contractual provisions are similarly common in Guernsey. In particular, subordination, limited recourse, set-off, and non-petition provisions are all recognised and enforced by the Guernsey courts. One notable exception to this is the appointment of a receiver. Guernsey law doesn't include an ability to appoint a receiver in respect of a Guernsey company, and it is unclear how the Royal Court would treat such an appointment made by another Court.
- **Security:** Guernsey has a simple and well-documented legislative regime for the creation, priority and enforcement of security interests in intangible movable property (other than leases of Guernsey real property). Security trustees and agents are commonplace, and aren't required to be established under Guernsey law.
- **Insolvency:** Guernsey has a leading insolvency regime offshore which closely follows the UK, including administration, liquidation, creditor schemes of arrangement, preferences, disclaimer of onerous assets, and extortionate credit transactions. As with the Companies law, the regime is designed for ease of use and flexibility.

Court system

The Royal Court of Guernsey is an experienced and trusted court system, with a Court of Appeal comprised of senior members of the judiciaries of England and Wales, Scotland, Northern Ireland, Jersey, Guernsey and the Isle of Man, and the Judicial Committee of the Privy Council in the United Kingdom as its ultimate appellate court, comprised predominantly of justices of the Supreme Court of the United Kingdom and other senior judges from the Commonwealth.

Listing

When it comes to companies listing on the main market of the London Stock Exchange and Alternative Investment Market, Guernsey has been consistently recognised as the front runner for non-UK jurisdictions. Conversely, securities issued by Guernsey companies have been accepted for listing on securities exchanges worldwide.

As a result, the International Stock Exchange ("TISE"), headquartered in Guernsey, is very familiar with listing securities issued by Guernsey companies and is committed to fast document turnaround with the Listing and Membership Committee meeting daily. It also has streamlined listing rules for specialist securities, including asset backed securities and variable funding notes. As a recognised exchange in the UK, TISE also allows qualifying listed debt securities to benefit from the Quoted Eurobond Exemption. It is also an affiliate member of IOSCO and a Designated Offshore Securities Market by the SEC.

Expertise

With its long history of financial services, Guernsey has enjoyed organic development of high-quality service providers, regularly recruiting directly from London and other international finance centres. The island has high-quality service providers, including administrators, registrars, auditors and legal advisors, and is located in the same time zone as London and easily accessible from both the UK and Europe.

Carey Olsen's structured finance, securitisation and restructuring team

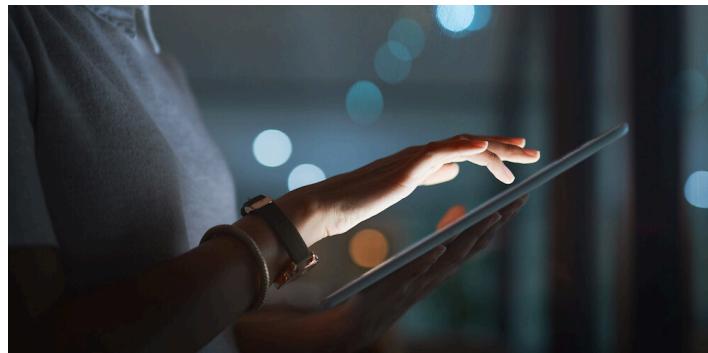
Carey Olsen is the only firm in Guernsey ranked tier 1 across all practice areas and is a local market leader in structured finance and securitisation. Our specialised structured finance and securitisation team advises on all types of structured finance and securitisation, both true sale and synthetic.

We are the leading listing agent on TISE (both by new issuers and number of new securities issued) having acted as listing agent on more TISE listings than any other listing agent.

The restructuring and insolvency team is market leading and unique to Guernsey in offering dedicated, partner led, expertise in its area. The team has played a major role in almost every significant insolvency or restructuring mandate in Guernsey in the last 15 years.

1. A leading global finance centre - Guernsey Finance accessed on 19 January 2025
2. Guernsey poised to benefit from new LSE rules to boost growth and innovation - Guernsey Finance accessed on 19 January 2025.

Please note that this briefing is intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such. © Carey Olsen (Guernsey) LLP 2026



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