

The use of Jersey special purpose vehicles in structured finance transactions

Service area / [Structured Finance and Securitisation](#)

Location / [Jersey](#)

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Introduction

As a politically stable jurisdiction in the same time zone as London, Jersey is a leading jurisdiction in which to incorporate a special purpose vehicle (a “**Jersey SPV**”) for use in structured finance transactions.

This briefing sets out some of most commonly cited benefits of using Jersey SPVs in structured finance transactions.

A variety of legal vehicles are available for use as a Jersey SPV, including cell companies, various forms of partnership and trusts. On the basis that Jersey SPVs most commonly take the form of a Jersey-incorporated company, the remaining references to “**Jersey SPV**” in this briefing should be read as referring to a Jersey-incorporated company.

Expertise

Jersey has been at the forefront of the global finance industry for over 50 years. It is acknowledged as one of the world’s leading international finance centres for banking, capital markets, structured finance and securitisation and has robust and mature legal, financial, corporate and administration sectors.

Jersey SPVs familiar to many investors

Jersey SPVs are common in many international transactions (including, among others, debt capital markets, equity capital markets and private equity transactions) and have been used in a wide variety of structured finance and securitisation transactions including securitisations involving a range of asset classes (such as residential mortgages, consumer loans and credit cards), synthetic securitisations and other structures for

the repackaging of financial instruments and off-balance sheet investments. They also remain an extremely popular choice as listing vehicles for global businesses, with many Jersey SPVs being listed on markets in the United Kingdom, the United States of America and Asia. Jersey SPVs are, therefore, familiar to many investors.

Compliance with international standards

Jersey meets international standards on anti-money laundering and counter-terrorist financing, tax transparency, fair taxation, anti-BEPS measures, legal substance requirements and information exchange. In particular, Jersey has been cleared by the European Union Code of Conduct Group on Business Taxation, which has confirmed Jersey as a cooperative tax jurisdiction, and has been placed on the ECOFIN “whitelist”.

Tax environment

Tax neutrality: Jersey provides a stable, tax-neutral environment in which to establish and maintain SPV structures. Generally, no tax should be levied on a Jersey SPV established in connection with a structured finance transaction. The majority of Jersey SPVs are subject to a zero corporate tax rate. Jersey SPVs may also be managed so as to be regarded as not resident in Jersey for tax purposes (subject to meeting certain requirements), avoiding difficulties that may arise in connection with companies having dual tax residence. Material tax filings will not be required, and economic substance requirements will not apply (irrespective of activities carried on and income received) in respect of a Jersey SPV that is regarded as not resident in Jersey for tax purposes.

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No withholding: payments in respect of debt securities may be paid by a Jersey SPV without withholding or deduction for or on account of Jersey income tax.

No stamp duty: no stamp duty is levied on the issue or transfer of shares or debt securities issued by a Jersey SPV.

Capital: Jersey does not levy taxes upon capital gains or impose capital duty.

Check the box: we understand that it is possible to check the box for US tax purposes.

Ease of establishment

Timing: a Jersey SPV can ordinarily be incorporated very quickly provided all required information has been supplied (e.g. within two hours of filing the incorporation paperwork) and statutory incorporation fees are not significant.

Capital: there are no minimum capital requirements for a Jersey SPV.

Flexible and familiar corporate law

Jersey corporate law is based on United Kingdom corporate law but with certain enhancements that allow for a more flexible and practical regime. Businesses can, therefore, operate within a familiar legal landscape but with greater freedom or, if preferred, substantially in accordance with normal United Kingdom practice. Some key highlights include:

Flexible capital maintenance regime: Jersey has a solvency-based distribution and capital maintenance regime, meaning there is no need to have “distributable reserves” or “profits available for distribution”. Instead, directors must make a prescribed form solvency statement. Most capital accounts (including the share premium account but not the nominal capital account) can be used to fund distributions and it can be possible to run a deficit in the profit and loss account. Redemptions and repurchases may be funded from any source and Jersey operates a dual regime with respect to formal reductions of capital which can either be sanctioned by the court or effected without any court input.

Flexible constitution: Jersey allows for significant flexibility in the constitutional documents of Jersey SPVs. For example, thresholds for special resolutions can be set at any level greater than two thirds (the default position) and there can be different thresholds for different types of special resolution. It is also possible to “hardwire” relevant investor protections as required. Shareholder agreements can be governed by English (or other) law and are usually drafted in a way that does not require them to be filed publicly. A Jersey SPV also has full corporate capacity without the need for a long form memorandum of association or other objects provision.

Pre-emption rights: there are no statutory pre-emption rights on share issuances or transfers.

Financial assistance: there are no statutory financial assistance rules in Jersey.

Choice of GAAP: a Jersey SPV, other than a “market traded company”, may choose any generally accepted accounting principles for the preparation of its accounts. “Market traded companies” must choose from the prescribed generally accepted accounting principles which include, among others, the International Financial Reporting Standards issued by the International Accounting Standards Board, the United Kingdom Generally Accepted Accounting Principles and the United States Generally Accepted Accounting Principles.

Audit and filing of accounts: a Jersey SPV that is a private company is not required to audit or file its accounts.

Flexible reorganisations: Jersey allows many options with respect to corporate reorganisations, including true legal mergers, demergers and migrations/continuances.

Debt issuances: A Jersey SPV will require regulatory consent from the Jersey Financial Services Commission to issue debt securities. Where a prospectus is issued, (and where, therefore, the SPV will be, or be treated as, a public company under Jersey law) consent of the Registrar of Companies will also be required. Jersey has a simple approval regime for debt capital markets issuances and consents can be obtained in good time.

Directors: a Jersey SPV’s directors need not be resident in Jersey and directors’ duties are similar to those in the United Kingdom. Corporate directors are permitted provided certain conditions are met.

Bankruptcy remoteness and security

Orphan structures: off-balance sheet structures are available, typically by way of the entire issued share capital of a Jersey SPV being held by a trustee on charitable trust. Non-charitable purpose trusts are also available. Only a small profit needs to be generated at the Jersey SPV level.

Contractual provisions: subordination, limited recourse and non-petition provisions are recognised and enforced by the Jersey courts.

Security: Jersey has a simplified, modern and efficient legal regime for the creation, perfection, priority and enforcement of security interests in intangible movable property.

Robust court system

Jersey has a robust court system that is experienced in complex high-value matters and that leads international developments in certain key areas of corporate law. The ultimate appellate court is the Judicial Committee of the Privy Council in the United Kingdom, which is comprised of senior United Kingdom judges.

Listing

Securities issued by Jersey SPVs have been accepted for listing on securities exchanges worldwide. The International Stock Exchange (“TISE”) is, understandably, very familiar with listing securities issued by Jersey SPVs and is a recognised stock

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exchange under United Kingdom tax legislation. TISE has streamlined listing rules for specialist securities, including asset backed securities and variable funding notes, and is committed to fast document turnaround with the Listing and Membership Committee meeting daily.

Carey Olsen's structured finance and securitisation team

Carey Olsen is a market leader in structured finance and securitisation in Jersey. Our specialised structured finance and securitisation team advises on all types of structured finance and securitisation transactions including master trusts, synthetic securitisations and whole business securitisations.

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.

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. Our ability to advise on all areas of law relating to structured finance and securitisation enables us to provide an overall level of service which is unmatched by competitors.



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