

Jersey SPVs and structured finance transactions

This note provides a brief summary of the use of Jersey SPVs in structured finance transactions, outlines the principle legal and regulatory regime in Jersey governing such transactions and highlights some key considerations for these types of structures.

Overview

Jersey has political and economic stability, high levels of regulation, tax neutrality and a sophisticated modern and flexible legal system combined with vast experience and expertise offered by highly skilled financial services providers. All of this contributes to maintain Jersey's position as one of the world's leading international finance centres.

Jersey continues to remain a primary jurisdiction in which to incorporate a special purpose vehicle ("SPV") as an issuer of debt securities. Jersey is the jurisdiction of choice for corporate entities seeking to list - with the greatest number of FTSE 100 companies registered outside of the United Kingdom (the "UK"), being registered in Jersey.

Jersey is an associate member of the Organisation for Economic Co-Operation and Development (the "OECD") and, whilst in the Customs Union and essentially part of the Single Market for trade in goods, is not otherwise part of the European Union. Securities issued by a Jersey SPV are treated as been issued by an OECD domiciled issuer.

Jersey SPVs in capital markets transactions are used for a wide variety of purposes, such as repackagings, Tier 1 capital raising, equity and debt capital raisings, derivatives, car fleet securitisations, real estate asset financing, sukuk structures and various other types of ABS and ABCP transactions.

Company Law Regime

Jersey companies are constituted in accordance with, and governed by, the provisions of the Companies (Jersey) Law, 1991, as amended (the "Companies Law"). The Companies Law allows great flexibility in structured finance transactions, such as:

- share capital - there is no minimum authorised or issued share capital for a Jersey company. There is no stamp duty payable in Jersey on the authorised share capital or on the issue or transfer of shares (with the exception of the shares in a Jersey company owning Jersey real estate). A Jersey company may issue shares with a par value or no par value with limited or unlimited liability. Treasury shares and fractional shares are permitted. The par value share capital of a Jersey company may be denominated in any currency and different classes of shares may be denominated in different currencies. Shares may be issued nil-paid, partly paid, fully paid or at a premium. In certain instances, securities may be uncertificated which facilitates the listing of shares via central securities depositories such as Euroclear;
- ultra vires - there are no statutory limits on the capacity of a Jersey company to undertake business transactions;
- directors - a Jersey company must have at least one director. There is no requirement for a director to be resident in Jersey, however, for a typical capital markets SPV, one Jersey resident director with appropriate experience will normally be required. Corporate directors are permitted in Jersey if provided by a Jersey regulated corporate services provider ("CSP");
- capital reduction - a Jersey company may reduce its capital without court approval;
- annual general meetings - a Jersey private company is no longer required to hold an AGM;
- accounts - a Jersey private company is not required to audit or file its accounts;

- secretary - a Jersey company must have a company secretary (not necessarily in Jersey). Corporate secretaries are permitted in Jersey; and
- registered office - a Jersey company must have a registered office in Jersey.

Regulatory Regime

There is a single regulatory authority in Jersey called the Jersey Financial Services Commission (the “JFSC”) that oversees, amongst other things, the issue of securities by a Jersey SPV. Whilst the JFSC has certain requirements that must be satisfied in relation to securities issues by a Jersey SPV, it does, in the interests of maintaining maximum flexibility, keep such requirements to a minimum. As long as the JFSC is satisfied that the Island’s reputation will not be prejudiced by being associated with the securities issuing scheme, it generally adopts a “hands-off” approach to the regulation of such issues and reviews its procedures and relevant legislation on a regular basis to achieve this.

When considering an application for a Jersey SPV to issue securities, the JFSC will have close regard to the following:

- type of investor(s): the JFSC will require confirmation of the intended target market;
- parties involved: all major parties to the transaction will need to be disclosed; and
- the SPV: the JFSC will need to be advised, on a confidential basis, of the beneficial ownership of the SPV.

If the number of persons in whose name the securities are to be registered or held (for bearer securities) exceeds ten, then regulatory consent for the issuance will be required by the SPV pursuant to the Control of Borrowing (Jersey) Order 1958, as amended (the “COBO Order”).

If there is to be a “public” offer of securities (basically, an offer to more than fifty people), the SPV will then be issuing a “prospectus” (as defined in the Companies Law) and must be incorporated as a public company. Consent from the registrar of companies (the “Registrar”) must be obtained prior to the circulation of a prospectus in Jersey or elsewhere (the “Registrar’s Consent”). The prospectus will be subject to the provisions of the Companies (General Provisions) (Jersey) Order 2002 (the “GPO”). Certain derogations from the requirements of the GPO may be obtained provided that the Registrar is satisfied that such derogations do not affect the substance of the prospectus or are not calculated to mislead. A copy of the prospectus signed by the directors of the SPV must be filled with the Registrar. The Registrar will require a true and fair English translation of any prospectus or information document that is to be issued in a foreign language.

There are stricter filing requirements for public companies with the most important being that a public company must prepare and file annual audited accounts together with the auditor’s report.

The route to obtaining consent under the COBO Order for a securities issue can be divided into four stages, as follows:

- preliminary stages;
- initial review stage;
- document review stage; and);
- registration and/or consent.

There is no charge for the issue of a consent to issue securities pursuant to the COBO Order or for a Registrar’s Consent.

The only charges that need to be considered are the company incorporation fee (standard fee of £200 with an additional “fast-track” incorporation fee if necessary) and the annual return fee (£150 per annum).

The JFSC does not undertake any on-going supervision of securities issues. Any “post-launch” requirements are therefore essentially governed by the terms of the COBO Consent and Registrar’s Consent.

Typical structure

- type of vehicle - in a structured finance transaction, the SPV is typically a limited liability company, a trust, limited liability partnership, cell company or other form of body corporate (depending on the local law in the place of establishment). In Jersey, an SPV issuing debt securities normally takes the form of a limited company. By definition, the SPV will be created specifically for the transaction and will therefore not have any previous operating history. An SPV can be incorporated quickly (usually within 1-2 days or within 4 hours (fast-track as mentioned below) upon payment of an additional fee). The SPV may be used as a “stand-alone” or “multi-issue” vehicle;
- charitable trust - one of the essential characteristics of a structured finance transaction is that the SPV is not owned, controlled or connected in any way with the arranger, originator or any other entity in the structure. The entire issued share capital of the SPV would normally be held by a trustee of a newly established charitable trust. Jersey trusts can be established very quickly. The trustee would normally be provided by the CSP and should be a Jersey incorporated company of stature and have a relevant track record and a physical presence (staff and premises) in Jersey. This form of “orphan” SPV is essentially to prevent the SPV (and the assets it acquires) from being included in any eventual insolvency proceedings involving, notably, the originator or any related party;
- bankruptcy remoteness - in most structured finance transactions the SPV will be bankruptcy remote. This is achieved principally by the following:
 - limited recourse and non-petition provisions: as all the transaction creditors (for example, noteholders, swap counterparty, liquidity providers etc.) are known in the transaction they can agree contractually (subject to any legal restrictions) to limit their recourse only to the assets of the SPV for the repayment of any amounts owed to them. The transaction creditors can also waive their rights to “petition” a court to commence insolvency proceedings against the SPV for non-payment of its debts to the creditors;
 - limitations on activities: the business of the SPV should be limited through contractual undertakings and its constitutional documents to what is necessary for it to perform its obligations under the transaction documents (such limitations would typically include prohibition of change of ownership, restricted powers of directors, no additional borrowings or guarantees or granting of security, no employees, no commingling of assets);
 - directors: appointment of independent directors from the originator; and
 - priority of payments: having known and identifiable transactional creditors means that they can agree to clear priorities regarding repayments according to a predetermined waterfall.
- credit enhancement: this is done in order to improve the credit ratings of the securities so as to appeal to investors. Examples include, over-collateralisation (value of receivables transferred is greater than the consideration paid by the SPV), letters of credit, retained spread (amounts due on the securities are less than the amounts received in respect of the receivables), insurance and issuing subordinated tranches (senior holders of securities have priority of payment and subordinated holders will absorb any losses before the senior holders of securities).

Key Parties

- originator - usually large financial institutions, large companies or small and medium sized enterprises;
- arranger - usually a financial institution;
- investors - usually financial institutions, insurance companies, hedge funds, pension funds, companies and high net worth individuals;
- trustee/security trustee - usually a professional corporate trustee;
- swap counterparty - financial institution;
- collateral administrator - typically a bank;
- servicer;
- paying agent - bank;
- clearing houses;

- rating agencies;
- listing agent - specialist teams (usually provided by the CSP); and
- professional services such as accountants, auditors and law firms.

Key Considerations

- **taxation** - a 0% general rate of corporate income tax was introduced in Jersey with effect from 1 January 2009. Since then, SPVs resident in Jersey (that is, incorporated in Jersey, managed and controlled in Jersey or having a permanent establishment in Jersey) will be taxed in Jersey at 0%. Dividends and interest paid to a Jersey or non Jersey resident are not subject to withholding tax. Capital gains are not taxable in Jersey and there is no duty upon the issue of shares or debt securities. Jersey does have a Goods and Services Tax (“GST”) which is a tax on the sale of goods and services in Jersey. Upon payment of an annual fee, an SPV can adopt for “international services entity” status and not be liable to pay or charge GST;
- **security** - pursuant to article 13 of the Security Interests (Jersey) Law 2012, a Jersey company is deemed to have capacity under Jersey law to grant security governed by a foreign law over property situated outside Jersey;
- **trusts** - pursuant to the Trusts (Jersey) Law 1984, trust assets are protected from the creditors of a Jersey trustee if the trustee becomes bankrupt. The trustee’s own assets are distinguished from those held in the trustee’s capacity acting as trustee;
- **credit rating** - the sovereign rating assigned by standards and poor’s ratings services to Jersey gives a maximum rating for securities issued by a Jersey SPV;
- **legal opinion** - the rating agencies (in addition to other parties) will expect to receive for review a legal opinion to be issued by the transactional lawyers where the SPV is incorporated. Continuous developments and enhancements to Jersey’s sophisticated and comprehensive infrastructure of laws ensure that robust Jersey legal opinions can be provided; and
- **listing** - securities issued by a Jersey SPV can be listed on a recognised stock exchange in order to meet investor requirements. A listing may also be made on The International Stock Exchange “TISE”), which has received a number of recognitions making it an attractive option for the listing of securities. One of the recognitions includes the designation of the TISE by HM Revenue & Customs (formerly the UK Inland Revenue) as a “Recognised Stock Exchange” pursuant to section 841 of the Income and Corporation Taxes Act 1988 which permits securities listed on the TISE to qualify as Eurobonds for UK tax purposes. The TISE has also been recognised by the US Securities & Exchange Commission and the Australian Securities Exchange. Hatstone Listing Services Limited is a full listing sponsor and can assist with listings on the TISE.

About Hatstone Lawyers

Hatstone Lawyers is Jersey’s leading boutique legal practice, specialising in corporate and commercial, capital markets, investment funds and private client. We offer a partner-led client focused service from our offices in Jersey, Panama and South Africa.

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