MAPLES GROUP

UPDATE

Jersey: An Alternative Jurisdiction for Global Securitisation Sponsors

From the start of 2022, Jersey has found favour as an alternative jurisdiction for securitisation and other securities issuance in 2022.

As a reminder of where Jersey is located: it is an island jurisdiction which sits approximately 14 miles off the French coast. As US readers may guess, the island gives its name to New Jersey in the United States. Jersey is an OECD territory and, in fact, has a long-standing reputation for facilitating structured debt issuance, dating back to the mid-1990s. Importantly however, and notwithstanding its proximity to France, Jersey is not part of the EU and EU directives have no impact on the jurisdiction or companies and other structures established there.

Jersey has a long history of debt-issuing vehicles and those have ranged from short-dated issuers such as asset backed commercial paper ("ABCP") and structured investment vehicle ("SIV") entities through to term ABS and high-yield bond issuers. Those issuers have been both rated and unrated and both listed and unlisted.

So, why are we seeing an increase in Jersey issuers for securitisation and other structured debt transactions? Some of the main attractions of Jersey include:

- Being an OECD territory but, importantly and as mentioned above, it is one that is outside the EU.
- Having a well-developed and long-standing regulatory policy towards securities issuance. This has been in its present form since 2000. In other words, the Jersey financial services regulator is familiar with and user-friendly towards CLO and related securitisation structures.
- The jurisdiction is bankruptcy remote-friendly and well known to the rating agencies.
- There is a significant community of finance lawyers, corporate service providers and other professionals on island who are familiar with securitisation and other forms of structured debt issuance. Many of the service providers operate in multiple jurisdictions including the Cayman Islands, Ireland and Luxembourg.
- Being a zero-tax rate jurisdiction. Issuers of securities pay no income tax on profits or gains.
- There is an availability of familiar legal structures including charitable trusts, corporates and limited partnerships.
- Corporate law technology in Jersey is based on but not exactly the same as English law. The main difference being that Jersey corporate law is more flexible than English law in relation to capital maintenance.

The Jersey financial services regulator applies a light touch regulatory regime to debt-issuing vehicles, including securitisation and other structures. It is certainly unlike anything seen in the EU jurisdictions.

The regulatory guidance is well-tested and essentially focuses on the stature and credibility of the parties to a transaction, with a particular focus on the roles played by arrangers, collateral managers and security trustees. Of equal importance is the investor type and profile.

The Companies Registry in Jersey allows fast track entity incorporation and it is very possible to incorporate a company within two hours of submitting incorporation papers to the Jersey Companies Registry.

The kind of deal types we have seen in 2022 using Jersey issuer vehicles include:

- Particular interest in US CLO issuance. We have both migrated (redomesticated) existing entities into Jersey from other jurisdictions and established new Jersey entities to carry out CLO warehousing and note issuance;
- We also see significant risk transfer (SRT) entities using Jersey vehicles to issue credit-linked notes; and
- There is a sustained interest in medium term note (MTN) programme issuance and, from a more general debt capital markets perspective, high-yield bond issuers continue to use Jersey, often coupled with a listing on a stock exchange such as the Channel Islands' TISE or Cayman Islands' CSX.

Our teams in both the Cayman Islands and Jersey have fielded questions from a number of clients about the use of Jersey as an alternative jurisdiction for global securitisation issuers. Some of the more frequently asked questions are detailed below.

Q: *Do EU directives apply?*

A: No, EU directives such as the Prospectus and Transparency Directive and the Market Abuse Regulation (MAR) will not apply simply by using a Jersey entity as the issuer of Jersey debt securities.

Q: *Does the collateral manager need to be licenced in Jersey?*

A: No, it does not. The Jersey regulator will however look at the regulatory status of the proposed collateral manager.

Q: *Do there need to be Jersey-resident directors?*

A: Yes, we think that best practice is for there to be at least two Jersey-resident directors and for board meetings to take place on the island. This also assists with Jersey's economic substance requirements.

Q: *Does an auditor need to be appointed?*

A: No, a typical US CLO entity will not need to appoint auditors as a matter of course.

Q: *Are these treated as investment funds in Jersey?*

A: No, a typical securitisation will fall outside of the scope of our collective investment funds regime.

Please also see our legal guide on Jersey Securities Issuance Vehicles: Frequently Asked Questions (FAQs)[1].

For further information about the use of Jersey entities in CLO and other structured debt securities issuance transactions, do approach your usual Maples Group contact who will be able to connect you with a member of our global finance team with Jersey CLO expertise.

Jersey

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[1] https://maples.com/en/knowledge-centre/legal-guides

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