Walkers

Acquisition and leveraged finance in the Channel Islands

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Key takeaways

- Jersey and Guernsey (collectively, the "**Channel Islands**") remain popular for both private equity buyout structures of UK and international corporate groups across various industries and asset classes, and for leverage structures to maximise existing investments and facilitate general corporate borrowing.
- Term loans, revolving credit facilities and high yield bonds are common features of transactions involving Channel Islands vehicles.
- Widespread familiarity with the flexible corporate landscape and the security interests regimes in the Channel Islands allows market participants to achieve their tax and financing objectives.

Introduction

Jersey and Guernsey are well-established jurisdictions of choice for many market participants considering where to establish their corporate structures for acquisition, buy out and leveraged strategies. The Channel Islands offer flexibility where certain other jurisdictions do not, including capital maintenance advantages, the ability to elect corporate UK tax residency and tax neutrality on interest, dividends and distributions.

Further, Jersey and Guernsey are well-known sophisticated international financial centres, offering settled corporate and finance regimes with a wealth of service providers across the legal, corporate administration and listing industries.

This guide provides an overview of the landscape for professional advisers, financiers, sponsors and corporates assessing the pros and cons of the Channel Islands as jurisdictions for their corporate structures and for those financing such structures.

This guide covers:

- Typical acquisition, buy out and general leveraged structures
- Financing considerations
- Regulatory overview

- Tax neutrality
- TISE listings
- What lies ahead

Typical structures

Acquisition and buyout structures

Often, for acquisition and buy out transactions, the core Jersey/ Guernsey stack includes:

- A bidco, which will usually be (i) funded on a leveraged basis, (ii) the borrower of senior debt to finance the acquisition and (iii) wholly owned by another Jersey/ Guernsey company, midco;
- A midco, which will usually be (i) funded on a subordinated mezzanine basis, (ii) the borrower of mezzanine debt and (iii) wholly owned by another Jersey/ Guernsey company, topco; and
- A topco, which will usually be (i) funded through equity subscribed for by the investor(s) and, particularly for buy outs, the management team and (ii) more widely held than bidco and midco.

This structure will be familiar to many in the UK, including tax advisors. There are, of course, variations here and there to suit transaction specific needs, often comprising a broader range of vehicles in the middle of the stack.

General leveraged structures and high yield bonds

The structural permutations are broader for corporates looking to lever existing investments or incorporate leveraged finance into their general corporate borrowing strategy. This can include a Channel Islands issuer established for a high yield bond issue, although issuer domicile is often driven by investor preference and tax considerations.

When a high yield bond is involved, an analysis of the corporate structure is usually undertaken to identify subsidiaries that meet a materiality threshold for guarantee and security purposes. We regularly see Channel Islands vehicles participate in such financings based on their materiality in the overall corporate structure, often pertaining to their holding company status, which can include another offshore parent vehicle.

Financing considerations

Typical guarantee and security features

When there is a Jersey or Guernsey component to an acquisition or leveraged finance transaction, the typical features are:

- Guarantee provided by the offshore obligor(s) under the English law finance documents.
- Jersey or Guernsey (as applicable) law security over local situs intangible movable property, typically shares, intercompany debt and sometimes bank accounts.

- English law security taken by way of debenture to the extent an offshore vehicle holds material non-local assets (and potentially other foreign law security over material foreign assets, although this is less common).

It is possible to take 'all asset' security in Jersey, such security extends only to intangible movable property with Jersey situs. It is not possible to take 'all asset' security under Guernsey law.

For acquisition and buy out structures, Jersey/Guernsey security over midco and bidco would customarily be a lender requirement, along with security over intercompany debt (which can be dealt with in the same security interest agreement). If there are Channel Islands bank accounts, those will often be secured too.

For leveraged structures outside an acquisition or buy out, the guarantee and security package will often be similar to that outlined above, bearing in mind the focus will likely be on whether there is a Jersey/ Guernsey parent company and/or any 'material' Jersey/ Guernsey subsidiaries.

Agreed security principles

Where agreed security principles are negotiated to accommodate international corporate structures, there are certain Jersey and Guernsey specific considerations that ought to be discussed at an early stage. Those considerations typically pertain to security creation and perfection, including the preference for the secured party to possess original share certificates and for bank account security / security assignment notices to be delivered at closing and acknowledgements to be obtained as soon as reasonably practicable.

Structural subordination

Where mezzanine or other junior debt is used, this will typically be funded above bidco level on an acquisition or buy out transaction or otherwise above the senior borrower in the corporate stack. This achieves structural subordination in the same way market participants will be familiar with in other jurisdictions with no Channel Islands specific concerns.

Regulatory overview

Lending

With the continued expansion of private credit and direct lending and an increasing number of lenders participating in the market, the attractiveness of Jersey and Guernsey for acquisition, buy out and general leveraged corporate structures is not held back by any regulatory overlay to lending practices. Lending of this nature is not a regulated activity in either jurisdiction, and there are no other licensing, residency or establishment considerations applicable to non-local lenders lending to Channel Islands vehicles.

Debt securities issuers

This guide is not intended to provide detailed guidance on Channel Islands debt securities issuers, but the headline points are:

- Jersey and Guernsey are well known as jurisdictions of choice for debt securities issuers, including loan notes and high yield bonds.
- Where there will be more than 10 note/bondholders, the Control of Borrowing (Jersey) Order 1958 ("**COBO**") dictates that a Jersey issuer must obtain consent from the Jersey Financial Services Commission ("**JFSC**") (not typically onerous).
- Changes to the Jersey prospectus regime in October 2021 have, by and large, removed the need to obtain a separate JFSC consent to the issue of a prospectus (required where an offer to the public is deemed to be taking place).
- In general, no requirement to issue a prospectus will arise in Guernsey unless the offer is promoted to more than 50 persons, and further exemptions may be available where the relevant security is to be listed on an exchange.
- Issuers of debt securities will not be treated as collective investment schemes in Guernsey or Jersey.

COBO also regulates the offer of debt securities in Jersey by foreign issuers, although it is not common for this to feature in these types of transaction.

AML/CFT Regime

Jersey and Guernsey's proceeds of crime and anti-money laundering regimes accord with Financial Action Task Force Recommendations and align with international standards. Jersey had its most recent assessment by the Council of Europe's anti-money laundering body MONEYVAL in late 2023, and in July 2024 MONEYVAL's Fifth Round Mutual evaluation report was published, setting out its findings, and commending Jersey for its strong legal and regulatory framework. This further endorses Jersey's standing as a leading financial centre. Guernsey had its most recent MONEYVAL assessment in April 2024, and the evaluation report is expected in Q1 2025.

The key point here is that debt securities issuers will generally not fall in scope of the Jersey or Guernsey AML/CFT regime, provided certain criteria are met (which will usually be the case).

Tax

The Jersey and Guernsey tax environments are a notable attraction for corporate groups considering which jurisdiction to establish their holding structures in for acquisition, buy out and general leveraged purposes, and for lenders to such structures. No liability to Jersey or Guernsey tax arises in respect of distributions, dividends, and payments on debt securities including no applicable withholding tax (provided the debt security holder/payment recipient is not a natural person who is Jersey / Guernsey resident). Similarly, share transfers are not generally subject to tax in the Channel Islands for the types of corporate vehicle typically seen in these structures.

Both Jersey and Guernsey also meet international standards for tax transparency, including in respect of information exchange and economic substance requirements.

Both Jersey and Guernsey are implementing aspects of the OECD's global minimum tax rate, known as Pillar 2, for accounting periods commencing on or after 1 January 2025. This implementation applies only to entities that are subject to tax in Jersey or Guernsey and who are part of a "multinational enterprise" group with a consolidated annual turnover of at least €750m.

TISE listings

The International Stock Exchange ("**TISE**"), based in the Channel Islands, remains popular for debt listings where the quoted Eurobond tax exemption is sought (allowing interest payments to be made without deducting UK withholding tax).

Regardless of the debt issuer's jurisdiction of incorporation (or tax residency), TISE is used for tax efficient structuring of, amongst other things, high yield bonds and structured shareholder debt, often in the form of loan notes.

Walkers has significant TISE listing experience acting as listing sponsor to a wide variety of issuers of a broad range of instruments, including high yield bonds. For further information about our listings team, please see our update regarding TISE's new Equity Listing rules.

What lies ahead

The leveraged finance market was subdued in 2023, with modest appetite rebounding in 2024. This is in part a product of the lingering consequences of rising interest rates, a quieter M&A market and political change in key markets. There is however reason for optimism heading into 2025. With elections in key markets behind us, inflationary pressures easing, falling (or at least more stable) interest rates and the continued growth of the private credit market driving not just the availability of credit but innovative credit solutions, we look forward to a return to deal making and increased leveraged finance activity next year.