

What you need to know about Jersey as a jurisdiction for the structuring of Securitisation of Real-World Assets.

Elliot Refson:

Today I'm talking to Dilmun Leach, a partner at Walker's in Jersey and a member of their Investment Funds and Corporate Practice Group about the virtual asset landscape in Jersey and specifically the tokenisation of real-world assets.

I've been talking a lot about this asset class recently from the perspective of its evolution and its potential but today we're going to focus on the structuring of this new asset class within Jersey's regulatory regime about Jersey's edge as a jurisdiction for structuring this asset class.

Let's start with the big picture, can you overview the landscape in Jersey for supporting tokenisation businesses?

Dilmun Leach: Jersey's base case is one of stability and world class infrastructure, for example we have the fastest broadband in the world.

Jersey also has 14,000 financial services professionals and more than 50 regulated corporate services providers who are able to provide supporting services, many of whom have quite deep experience in digital assets both in relation to investment funds, but also token issuers and tokenisation platforms.

The Jersey corporate services provider, usually a regulated administrator, can provide directors, company secretary, a money laundering reporting officer, a money laundering compliance officer, as well as accounting and administration services.

Elliot Refson:

So, there is a good environment and pool of talent to both support the industry.

You mentioned tokenisation platforms – Walkers were involved in the creation of the first one in Jersey as well as the launch of a platform involving the securitisation of virtual assets and the issuance of Swiss Actively Managed Certificates.

I'm really interested to discuss their structuring. Let's start with the securitisation of virtual assets. Why did they pick Jersey and how does this structure look in Jersey and does it differ from other jurisdictions?

Dilmun Leach:

As you mentioned, we have recently worked on a new white labelled securitisation platform using a Jersey company to hold underlying assets such as listed shares, bonds futures as well

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as digital assets and potentially crypto assets. The Jersey company is a simple securitisation vehicle.

Elliot Refson: What is the function on a Jersey company in this context of a securitisation vehicle structure?

The Jersey company issues a traditional note to the investors which is known in a Swiss context as an actively managed certificate. The Jersey company can be owned by a group company as in a typical securitisation or could be owned by an orphan trust if it's required to be held off balance sheet.

Jersey is very well known in the securitisation space. We've been forming securitisation vehicles in Jersey for many years and there is specific regulatory treatment of these vehicles. In Jersey a securitisation vehicle is not a collective investment fund under our funds law, there's a specific exemption for that.

Elliot Refson: That is very interesting. We have seen around 400 securitised CLO structures migrated to Jersey or created in recent years from Caribbean jurisdictions. Why did the European Bank choose Jersey?

Dilmun Leach: More widely the CLO securitisation structures came to Jersey as a result of other jurisdictions being grey listed or having other issues where there have been European banks involved as investors or counter parties.

Jersey is, however, well respected in that market reflective of its experience as well as its FATF and MoneyVal rating for anti-money laundering measures so it is fair to say that European players and banks have become more familiar with Jersey for securitisation vehicles.

Elliot Refson: How are securitisation vehicles treated under the Alternative Investment Fund Managers Directive (AIFMD)?

Dilmun Leach: A securitisation vehicle is not an AIF under the EU AIFMD, meaning it does not need to comply with the directive.

Elliot Refson: That's interesting. Is there a limit in Jersey to the number of people that these securitisation vehicles can be sold to as there are in other jurisdictions?

Dilmun Leach:

No there is not a limit. A securitisation vehicle issuing notes is not a collective investment fund there is no limit on the number of investors in Jersey. However, restrictions are based on the jurisdiction where the investors are based. For example, if the investors are based in the EU, then the product will need to fit with the EU legislation. Consideration would be given to whether they are structured products or securities, whether they need a license under MIFID or whether there are other EU legislation as to how they're marketed.

At Walkers, what we have seen with various products is an approval via one lead EU member state as the primary regulator to market these products as notes and then the products can be sold across Europe.

(Note: At Walkers from our Jersey office, we can only advise on the Jersey regulation and procuring the Jersey consents for the Jersey company to issue those notes).

Elliot Refson:

Thank you, Dilmun, turning to the tokenisation platform, can you talk us through the structure of that?

Dilmun Leach:

A tokenisation is effectively a securitisation. It works in a very similar way, but from a Jersey legal and regulatory perspective, it is effectively the same.

For example, a Jersey tokenisation may involve a Jersey company with shares held by a purpose trust, if the client wants to keep it off-balance-sheet. If the client is not concerned about the tokenisation being an orphan, off-balance-sheet structure, then a Jersey tokenisation could be held by the client's group.

The Jersey company will then acquire underlying assets and it will issue "a note" - using blockchain technology a token - to the investors.

That token is referable to the underlying real-world asset.

That token is referable to the underlying real-world assets. For example, a Jersey company might hold shares in Google and then it issues a token to an investor and that token relates to the underlying Google shares.

So, if the investor wants to redeem the token. Jersey company will effectively sell the Google shares and take any fees that are payable to custodians or other service providers and pay the realisation proceeds to the investor.

From But from a Jersey legal perspective, it works very similarly to a securitisation. And so it is not a fund because it's a securitisation vehicle. And it's not an AIF because it's a securitisation vehicle. As with the other securitisation, the traditional securitisation vehicles, we will need a consent from the Jersey Financial Services Commission (JFSC – the regulator) to issue the token, and we would need that currently under the Jersey ICO guidance notes, which are issued under the Jersey Control of Borrowing Jersey Order. And those guidance notes have been around since 2018.

Elliot Refson:

Can you talk to the plans to revise the ICO Guidance notes in relation to tokenisation?

Dilmun Leach:

As one of the founding members of a working group, which worked on producing those guidance notes with the Jersey Financial Services Commission (the regulator) in 2018 we have

worked with the JFSC to issue the recently released new guidance notes specifically around tokenisation, titled Real World Asset Guidance 2024.

This guidance sets out the requirements for Jersey tokenisation and there will be an application form to fill out to get the requisite consents to issue those tokens.

Elliot Refson:

What will be the implications of the tokenisation of Real-World Asset Guidance 2024.

Dilmun Leach:

Tokenisation of real-world assets is effectively the same as securitisation for Jersey law purposes.

There will be a form to fill out and the jersey regulator will grant its consent In relation to the issue of those tokens, which is a marked differentiator to our competitor jurisdictions where you might not need a consent to issue those tokens and rather the issuance is based on a legal opinion as opposed to proactive consent by a regulator.

Elliot Refson:

What Customer Due Diligence is required for tokenisation?

Dilmun Leach:

With virtual tokens, since 2018, when the original Jersey ICO guidance notes were published, the JFSC requires there to be CDD checks or identification measures on investors who acquire a token and also on a holder of a token who wishes to redeem that token. So the jersey company which issues the token, it can't issue a token to someone in exchange for cash or other assets without identifying that person.

And likewise, he can't redeem or cancel that token in exchange for cash or other assets without identifying that person (or CDD checks).

If the original investor wants to transfer the token to someone else on the secondary market, that it does not require CDD by the Jersey company. So, the Jersey company is not concerned in relation to secondary transfers from a Jersey CDD perspective.

What that means is effectively these tokens are bearer instruments. When you issue a token to an investor, they are then freely transferable and effectively can be permissionless and transferable on the secondary market until a holder wants to redeem those tokens. This is different to an investment fund or a company that issues shares or a limited partnership that issues partnership interests where you have to know at all times who is the shareholder or the investor and you, you have to have a register of holders of those shares or other interests when it's an equity interest.

Whereas for a virtual token, you only have to do identification measures on issue and redemption from a Jersey CDD perspective.

Elliot Refson:

That was very interesting Dilmun and it would appear that Jersey has a real edge. Thank you for taking the time to talk to me.