

A Special Purpose Vehicle ("SPV") is a term applied to a wide range of companies, formed for the specific purpose of entering into a financial transaction or series of linked transactions, often as part of a financial restructuring within a multi-national group of companies, for securitisation of assets or liabilities or for tax-efficient structuring of a transaction.

DEFINITION OF AN SPV

A SPV is not a specific or unique form of legal entity and most are structured using a normal company limited by shares, although the ownership of these shares is often through an 'orphan' vehicle. Certain transactions, where appropriate, may also be structured through Companies Limited by Guarantee, Protected Cell Companies or Incorporated Cell Companies.

The main benefit of using an SPV is as a means of ensuring that the transaction(s) for which they are formed are safe from the taint of any other previous or future unrelated transactions within the same company.

WHY GUERNSEY FOR SPVS?

The very same factors that make Guernsey a first class location for financial services in general, make us a natural home for SPV structures. Some of the key advantages of choosing Guernsey are:

- Modern company and trust laws, both comprehensively updated in 2008;
- A wide choice of professional service firms and support services (lawyers, accountants, banks, etc.)
- A stable political and fiscal environment;
- Good communication links to United Kingdom, mainland Europe and beyond;
- A convenient time zone for business (GMT) with all parts of the world;
- Absence of exchange controls or withholding taxes on payments from Guernsey.

STRUCTURING AN SPV

It is often the case that the structuring of a SPV transaction requires that the SPV company have 'orphan status', meaning that ownership of the company must be separate and distinct from the other parties to the transaction.

The most common method of achieving this is for the shares to be held by a Purpose Trust, which can be either charitable or noncharitable under Guernsey Trust Law.

If deemed necessary, the objects set out in the company's Memorandum can be very specific and limited in terms of the type of transactions permitted, the parties with whom the company may contract and similar restrictions. Although it is possible to alter the Memorandum to vary such restrictions, the need to do so can be avoided by care and anticipation in its initial drafting.

If the transaction(s) to be undertaken will not generate any surplus cash flow then it may be necessary to ensure adequate initial capitalisation of the SPV company to cover its running costs over its intended life, up to and including its eventual winding up.

Management and control of the SPV may need to be demonstrably exercised from Guernsey in order to comply with any nonresidency qualifications in other relevant jurisdictions.

So long as the company does not derive income from Guernsey real estate or have any beneficial ownership by a Guernsey tax-resident individual, any profits arising from the company's activities will be taxed in Guernsey at the standard rate for companies, being 0%.

GUERNSEY TRUST COMPANY LIMITED'S ("GTC") EXPERIENCE AND CAPABILITIES

GTC staff members are very experienced in the formation, administration and management of SPV structures and with general corporate matters. We have acted in transactions ranging in value from tens of millions to billions of dollars.

Our commercial law colleagues at Collas Crill can assist in providing legal advice, opinion and assistance in structuring the Guernsey elements of the transaction and in ensuring that any ancillary documentation is appropriate under Guernsey law. They can also assist in situations where existing entities need to be migrated into Guernsey as part of the restructuring of an existing arrangement.

We can provide in-house (or recommend external) local directors as appropriate and corporate secretarial services or support, to include maintenance of statutory books and registers and drafting of minutes.

Bookkeeping and accounts production are provided by our staff as well as general administrative functions and monitoring of ongoing requirements.

GTC can also advise and assist in the set-up of an overlying Purpose Trust to hold the shares in the SPV, as well as providing ongoing trustee and administrative services.

CONCLUSION

SPVs can be used for a very diverse range of transactions and purposes. However, the basic principles underlying the structure and execution of an SPV are well established. GTC has ample experience of SPVs.

Given the typical size of transactions and the potential financial damage where the design or the delivery of a planning structure is flawed, it is critical that experienced and professional advisors are engaged to minimise such risk. We believe that GTC and Collas Crill together provide the high levels of service demanded.

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