VOISIN LAW

Jersey legal opinions: what are they and when are they required? | 1

What is a legal opinion?

Jersey legal opinions are used in order to confirm the valid incorporation and existence of a Jersey legal entity, its capacity and authority to enter into contractual relations and whether or not, as a matter of Jersey law, those contractual relations are binding and enforceable
against it.

When might a legal opinion be requested?

Legal opinions are commonly requested on cross-border transactions, specifically for transactions which involve the acquisition of companies, loan and security transactions and property sale and purchase transactions.

They are generally requested from Jersey counsel when an element/aspect of the transaction has a Jersey link. For example, in cases where a Jersey company (in its capacity as a borrower, guarantor, purchaser, seller etc.) is entering into a contract governed by the laws of another jurisdiction.

Alternatively, legal opinions may also be required in cases where the documents to be entered into are governed by Jersey law, with a common example being in banking transactions, where the entity in question is entering into a Jersey law security interest agreement.

What does a legal opinion usually cover?

Jersey due capacity and enforceability opinions will generally confirm, amongst other things, that the Jersey entity:

(a) has been duly incorporated and validly exists and that its constitutional documents do not prevent the actions it is taking; and

(b) has all necessary capacity, power and authority to enter into the transaction documents;

The legal opinion will also generally confirm the following in relation to the relevant transaction documents:

(a) that they have been duly executed by the Jersey entity;

(b) that they constitute the legal, valid and binding obligations of the Jersey entity and the same are enforceable against it in accordance with their terms; and

(c) the choice of law to govern the transaction documents is a valid choice of law and would be upheld by the courts of Jersey Legal opinions will usually contain a number of assumptions which will mainly be about factual matters which the Jersey lawyers giving the opinion cannot reasonably confirm or check (for example, that all signatures on the documents are authentic).

Legal opinions will also usually contain qualifications, which will limit the opinion when absolute assurance cannot be given. For example, qualifications may relate to points of law such as the approach local courts

would take to enforcing the transaction documents.

What matters would a legal opinion not normally cover?

Opinions are given as to matters of law and do not cover matters of fact.

For example, a legal opinion would not be used to confirm whether an entity is solvent or whether it has complied with specific obligations under Jersey law.

As a result, it is, therefore, standard practice for a director of the relevant Jersey entity to provide an opinion certificate confirming certain factual matters relating to that entity, which accompanies the legal opinion itself.

What information would we normally request in order to prepare a legal opinion?

In order to start the process of drafting the legal opinion, we would normally request the following information:

(a) constitutional documents of the Jersey entity (by way of example, for a company this would comprise of the certificate of incorporation, any certificates on change of name, the memorandum and articles of association (and any special resolutions amending the articles), the consent issued to the company pursuant to the Control of Borrowing (Jersey) Order 1958 and the company's register of members, register of
directors and register of secretaries);

(b) a draft of the board minutes of the Jersey entity approving entry into of the relevant transactional documents that need to be covered by the legal opinion (or alternatively we can prepare these) – the purpose of reviewing or preparing these minutes in draft is to ensure that the board resolutions are sufficient for the purposes of the legal opinion; and

(c) the latest drafts of the transactional documents to be entered into by the Jersey entity.

What searches are normally carried out in relation to the Jersey entity?

In relation to Jersey companies (by way of example) it is possible to carry out the following searches:

(a) a search on the company at the Jersey Company Registry;

(b) an enquiry of the Viscount's Department as to the existence of a Jersey désastre (bankruptcy) declaration in respect of the company;

(c) an enquiry of the Judicial Greffe as to whether the company has been listed as being the subject of an application for a creditors' winding up;

(d) a search of the Security Interests Register of the Jersey Financial Services Commission (which should reveal details of any Jersey security interests, including details of the secured party, grantor, collateral and

duration of registration); and (e) an enquiry of the Judicial Greffe as to whether the company has any direct involvement in current litigation before the Royal Court of Jersey.

We typically expect to undertake searches (a) to (d) above on most transactions, albeit the specific searches that are required will ultimately depend on the terms of the transaction documents and the requirements of the party requesting the legal opinion.

It should be noted that these searches are limited in the information they disclose. It is also possible that the searches may not disclose the most up-to-date information. For example, if there is a delay in the publication of a special resolution which has been filed but which has
not yet appeared on the Jersey Company Registry website.

Issuing the legal opinion

The type of transaction in question will dictate when an opinion is issued. However, generally speaking, in order to issue the legal opinion we would require:

(a) clear search results (it being important to note that some searches must be ordered 24 hours in advance);

(b) fully signed and dated transaction documents;

(c) signed and dated authorisations for the Jersey entity (for example, board minutes if the entity is a company); and

(d) signed and dated director certificate, which would be appended to the legal opinion In practice, we will usually be able to issue a legal opinion on the basis of signed transaction documents even if they have not yet been dated, provided that the opinion will remain held
to our order until completion/dating of those documents has been agreed, at which point our opinion would be released.

Conclusion

We regularly provide legal opinions in relation to Jersey companies, foundations, trusts and limited partnerships and offer competitive fixed fees with the scope to reduce overall fees if more than one opinion is required.

Legal opinions are often a condition precedent to financing transactions and instructing Jersey counsel early on in the process will help avoid any last-minute issues at completion.

Please get in touch with a member of our team should you have any questions.