COLLAS CRILL

# Starting a tech business in Jersey

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As one of the world's leading financial centres, with a well respected system of regulation, a wealth of expertise and a modern and flexible companies law, Jersey is the ideal jurisdiction in which to start a technology business.

We have set out below some of the key factors that make Jersey such an attractive place to launch a high-tech business.

**Companies Law**

The primary piece of legislation governing Jersey companies is the Companies (Jersey) Law 1991 (the **Companies Law**). The Companies Law has its foundations in English companies law, which means that not only is it robust and well respected, but it will also be familiar to investors around the world (it is worth noting, for example, that Hong Kong's companies law has similar provenance, and that a number of Jersey Companies have been listed on the Hong Kong Stock Exchange in recent years, as well as on the London Stock Exchange and NASDAQ amongst others).

Despite the similarities, Jersey offers a degree of flexibility not currently afforded by English law in certain areas. For example, a Jersey company may repurchase its own shares from any source provided that a solvency test is met. Similarly, assuming the company is solvent and can discharge its liabilities as they fall due for at least 12 months, a Jersey company can make a distribution to shareholders from any source other than nominal capital or capital redemption reserve.

**Initial Public Offering**

Jersey companies can list uncertified shares on UK exchanges such as the London Stock Exchange, the Alternative Investment Market and the NEX Exchange using CREST pursuant to the Companies (Uncertified Securities) (Jersey) Order 1999. In addition, Jersey companies can list on other exchanges such as NASDAQ, the New York Stock Exchange or the Toronto Stock Exchange pursuant to the Companies (Transfer of Shares – Exemptions) (Jersey) Order 2014.

Whilst the admission document will generally qualify as a prospectus from a Jersey law perspective, the content requirements are generally factual in nature and are not generally considered to be onerous. Examples of recent Jersey listings include BigDish on the main market of the London Stock Exchange and Mimecast and Novocure on NASDAQ.

**Crowd Funding**

The JFSC has issued guidance in the form of answers to frequently asked questions on crowdfunding in Jersey, which clarified that in most cases crowdfunding would not be a regulated activity. There are, however, a number of legal considerations to take into account before an entity can engage in crowdfunding. Examples of the kind of issues that would need to be addressed would be whether a prospectus is required pursuant to the Companies (General Provisions) (Jersey) Order 2012, or whether additional consents are required pursuant to the Control of Borrowing (Jersey) Order 1958.

**Joint Venture**

Jersey is a popular jurisdiction for the formation of joint-ventures. Jersey's close proximity to both continental Europe and the UK, and it's location within the same time zone as London make it an attractive prospect offering:

- the practicality of being close to such a large tech-hub;
- close proximity to potential sources of finance in the City; and
- a location on the doorstep of Europe, one of the worlds biggest technology markets.

Where joint-venture partners are located in different countries, Jersey can often also offer a convenient "neutral" jurisdiction to launch a new project.

Joint ventures in Jersey can be structured in a number of ways. In addition to having a flexible companies law and a streamlined company formation process (if required there is a fast-track process that allows for a company to be formed on the same day), Jersey joint ventures are also often formed as limited partnerships. A Jersey limited partnership is even more flexible than a company with few constraints on what joint venture partners can agree in the limited partnership agreement.

**Cryptocurrency**

Jersey prides itself on being an innovative and flexible jurisdiction in which to do business. In light of the growing importance of cryptocurrency and the need to put in place a regulatory regime to provide a framework for the exchange of cryptocurrency, legislation was passed in 2015 requiring virtual currency exchangers to register with the Jersey Financial Services Commission (the **JFSC**) and implement certain AML/CFT procedures. However, in recognition of the importance of giving fledgling technology businesses the freedom to experiment and develop their business models, services and products without being constrained by burdensome regulation, the law also created a "regulatory sandbox" which exempts virtual currency exchangers with a turnover of less than £150,000 from most of the provisions of the law.

**ICOs**

ICOs are a new and innovative method of raising capital through blockchain technology, and are becoming increasingly popular. In an ICO Instead of issuing debt or equity as you would see in a traditional capital raise, the issuer/operator issues digital tokens, often referred to as "coins", in exchange for consideration in the form of fiat currency, crypto currency or both.

The JFSC and the Jersey government have engaged constructively with interested parties in Jersey, and in particular with Jersey's Digital Assets Working Group (of which Collas Crill is a founding member and has been heavily involved) to shape Jersey's approach to ICOs. In July 2018 a set of guidelines were issued by the JFSC which provide that amongst other things, an ICO issuer must be incorporated in a Jersey, apply relevant AML /CFT procedures to anyone purchasing tokens or selling them back to the issuer, and appoint a Jersey regulated corporate services provider.

The guidelines provide clarity on the approach that the JFSC will take to applications to launch Jersey ICOs, and are seen as a significant step forward in Jersey's development as an important jurisdiction in the ICO space.

**Technology Funds**

Jersey has a world leading funds industry with over £300bn currently invested in funds domiciled in the jurisdiction. Of particular interest to the technology sector is the Jersey Private Funds regime which was introduced in early 2017 and which is suitable for up to 50 investors. Jersey Private Funds (**JPFs**) are lightly regulated funds which do not require an audit or a prospectus, making them an ideal choice for start up technology funds. There is also no requirement for a JPF to have Jersey resident directors (although the JFSCs expectation is that there will be at least one), and no requirement that the general partner of the fund be incorporated in Jersey.

A JPF may have to up 50 investors and make up to 50 offers to investors that are capable of acceptance. Each investor in a JPF must be a "professional investor" within the meaning of the JPF Guide or an "eligible investor" (which will generally mean that the investor will need to make an investment of at least £250,000 or the equivalent amount in another currency). A JPF is also required to appoint a Jersey corporate services provider as designated service provider (**DSP**). The DSP will be responsible for ensuring that the fund meets the eligibility criteria for a JPF and the JPF meets its obligations under the JPF Guide and under Jersey's AML/CFT regulations.

**GDPR**

Jersey has had data protection legislation since 2005. The previous legislation was regarded as providing materially equivalent protection for EU data protection purposes. Following the introduction of the General Data Protection Regulation (**GDPR**) and the Law Enforcement Directive (**LED**) Jersey brought in two pieces of legislation which were intended to ensure the Jersey data protection regime maintained equivalence with the EU data protection laws. The legislation is:

- The Data Protection (Jersey) Law 2018 (**DPJL**); and
- The Data Protection Authority (Jersey) Law 2018 (**DPAJL**).

The DPJL deals with duties of data controllers (including the data protection principles), duties of data processors, conditions for processing, obligations to appoint data protection officers (which does not come into force until 25 November 2018), rights of data subjects, exemptions to parts of the law, cross border transfers and exemptions to the adequacy requirements and remedies and enforcement.

Although largely consistent with the GDPR there are some differences as compared with the text of the GDPR. One significant practical difference is that the period for complying with data subject rights requests is 4 weeks rather than one month (as is the case in the GDPR) and the right of further extension is 8 weeks rather than two months (as is the case in the GDPR).

The DPJL also deals with the LED in Articles 4(5) and 4(7) in conjunction with schedule 1 by modifying the application of the provisions of the DPJL in respect of processing personal data by controllers that are competent authorities for a law enforcement purpose.

The DPAJL establishes the Data Protection Authority in Jersey, sets outs its functions and also provides for obligations for relevant data controllers and processors to register with the Data Protection Authority and to pay relevant prescribed charges. The DPAJL with enforcement by the Data Protection Authority including powers to investigate complaints and undertake inquiries and its powers of sanction following a finding of a breach (including fines).

The introduction of new data protection legislation in Jersey to match developments in the EU demonstrates not only Jersey's desire to maintain a robust, modern data protection regime, but also a desire to promote frictionless exchange of information with its European neighbours. Both of these objectives can only be a positive for Jersey businesses.

**Looking to the future**

Jersey has just introduced new legislation offering even greater flexibility to start-ups. It has introduced a new law to revamp its regime relating to limited liability partnerships (**LLPs**), which came in force on 1 August 2018. The government is also looking to introduce a new legal entity to Jersey's repertoire, the limited liability company (**LLC**).

**Limited Liability Partnerships**

LLPs offer benefits usually reserved for companies such as limited liability for their members and separate legal personality, whilst having much of the flexibility normally associated with partnerships. LLPs are governed by their partnership agreement, and so partners have a great deal of scope to agree amongst themselves the terms on which the business will be run.

LLPs have been a feature of Jersey law for some time, but the new law will make the vehicle more attractive to businesses who are considering basing themselves in Jersey. Some of the key changes are:

- Members can now contribute "capital, effort and skill", whereas previously they were required to contribute "effort and skill". This means that a business' founders can now go into partnership with investors who will provide the capital that is vital for a new business to grow, without having to get involved in the day to day running of the partnership.
- Under the old Jersey LLP law LLPs had to make an annual statement confirming that they were solvent and could pay their debts as they fell due. The new law has removed this requirement, now an LLP only has to make such a statement if a member is planning to make a withdrawal of partnership capital.

**Limited Liability Companies**

LLCs have proved to be incredibly popular in the United States, and now Jersey is planning to introduce it's own version of the vehicle. LLCs share a number of characteristics with LLPs and are often described as a "hybrid" between a company and a partnership. Unlike a traditional company the Jersey LLC is governed by an LLC agreement which the members are largely free to agree amongst themselves.

Under current proposals the Jersey LLC is likely to share some important features with its US counterparts, most notably it will have the ability to create "series" each with its own separate legal personality, giving businesses the ability to ring fence certain projects if they wish. Perhaps most importantly in the US centric world of the technology sector, the LLC will provide a vehicle that potential partners or investors based in the US will know and understand.