



## Jersey: growing impact of sanctions

### Lisa Springate, partner, Bedell

The number of countries that are the subject of the European Union's (EU) targeted economic sanctions continues to grow, with more than 30 countries now affected. Given Jersey's role as an international finance centre, it is inevitable that international sanctions will continue to impact upon Jersey's financial services sector.

The EU's response to the recent Ukraine crisis has been to pass legislation imposing financial sanctions on named individuals and businesses they believe to be responsible for the ongoing situation in Ukraine. This legislation

has in turn been implemented in Jersey.

The essential question for trustees in Jersey is whether, on or after the coming into force of this legislation, any assets of a trust can be said to be the 'funds' or 'economic resources' that are "belonging to, or owned, held or controlled by a 'designated person'". If they can, they must be 'frozen' and no person may 'deal with' the assets. This is not necessarily a straightforward question.

For example, the reference to funds being 'held' shows that there is no need for the designated person to actually have any beneficial interest in the assets or title to the assets.

## Jersey: a centre for UK property deals

### Jonathan Heaney, head of Jersey office, Walkers

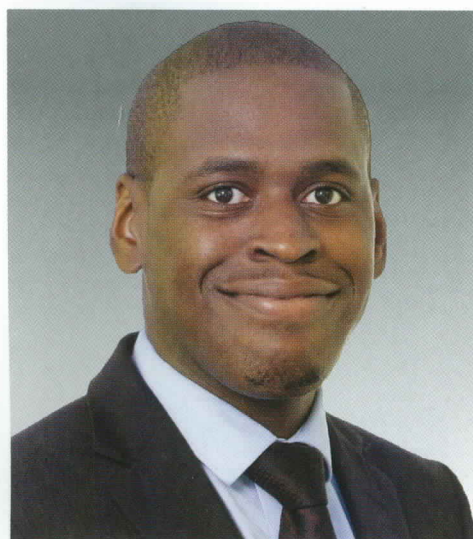
Jersey thrived in the late 1990s and early to mid-2000s as the preferred domicile for holding and financing structures for UK, commercial real estate. Largely as a result of a modern and flexible trusts law recognising 'Baker trust' principles, real estate structures began to form the bedrock of Jersey's modern finance industry. Historically a private wealth/private client jurisdiction, Jersey quickly evolved into a jurisdiction that is almost synonymous with UK real estate acquisition and financing transactions.

The onset of the financial crisis in 2007 saw a significant decline in UK real estate activity, not helped by an earlier UK

legislative change involving 'seeding relief'.

The last 12 months, however, have heralded a change in fortune. As the global financial crisis appears to ease, investor confidence has returned. Banks are slowly returning to normal lending activity; once a lender's market, borrowers are now having more of a say in lending terms.

The noticeable increase in real estate transactional activity continues to create opportunities for Jersey's finance industry. In response, the jurisdiction is evolving to meet the needs of the global real estate market. Investor familiarity, history and the simple fact that large amounts of UK commercial real estate are already held through Jersey structures will keep Jersey at the forefront of UK real estate structuring requirements.



## Jersey: high standards for trustees

### Edward Mackereth, partner and global head of dispute resolution, and Leon Hurd, associate (pictured), Ogier

In *Nolan v Minerva Trust & Others* [2014] JRC 078A, the Royal Court found that fraudulent inducements of members of the Nolan family to enter investment transactions, made by an individual named Gerard Walsh, amounted to breaches of trust. Further, the defendants, including Minerva (via predecessor company PTCL), had dishonestly assisted in these breaches of trust by complying with Walsh's instructions to pay money away as part of the transactions.

The Royal Court found that the trustee's conduct had amounted to being dishonest,

noting that in these circumstances:

- honesty is judged by objective standards;
- honesty requires careful judgement. Regard must be had, by a person acting honestly, to all the circumstances known to him, including any degree of doubt and potential detriment to beneficiaries;
- knowledge is judged cumulatively and forms part of a 'continuum';
- circumstances will dictate the honest course of action; and
- it is not necessary that a trustee appreciates that it was acting dishonestly.

This highlights the dangers of acting at the behest of a third party without independent consideration of what is being proposed.