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Legislative developments in corporate finance

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There have been a number of legislative developments in Guernsey during the past year, particularly in the realms of finance and corporate law.

Zero-ten

The beginning of 2008 marked the introduction of a new corporate tax regime in Guernsey, the zero-ten regime. From January 1 2008, the majority of companies pay a 0% rate of income tax on profits, while certain companies pay a higher rate of either 10% or 20%, for example those carrying out specified banking activities, or activities of regulated utilities.

Distributions made to an individual shareholder that is a Guernsey resident are taxed at 20%. However, a 0% rate is applicable when a distribution is made to a Guernsey company or a non-Guernsey resident.

Companies Law

A new Companies Law came into force on 1 July 2008. The new Law consolidates the existing Law and incorporates a number of improvements. The new Law also makes provision for two new types of company - unlimited companies and mixed-liability companies, which can have shares, unlimited-liability members and guarantee members.

The previous companies legislation is set out in the Companies (Guernsey) Law 1994, together with a number of later ordinances that were introduced to take advantage of new business opportunities. These include ordinances introducing protected-cell companies and incorporated-cell companies and regulating migrations and amalgamations. The new Companies Law consolidates all of these under one Law.

Capital maintenance

Perhaps the most significant change under the new Companies Law is the departure from the doctrine of capital maintenance - an approach similar to that adopted in New Zealand. Under the 1994 Law a Guernsey company was only permitted to pay a dividend out of "profits available for the purpose". With the abolition of the capital maintenance rule, a Guernsey company will be permitted to make a distribution (such as a dividend) to shareholders other than out of profits, provided that the company satisfies a solvency test. In summary, a company is deemed solvent if it satisfies the following:

- (i) it is able to pay its debts as they fall due;
- (ii) the value of its assets is greater than its liabilities; and
- (iii) in the case of a regulated company, it satisfies the requirements laid down in the regulatory laws applicable to it.

The three-limbed test provides a degree of certainty and consistency. In addition to being relevant to distributions made by a company, it will apply to a number of corporate processes. These include migrations, amalgamations, reductions of share capital and redemptions of shares.

Incorporation

The process for company incorporation has changed under the new Law, marking a move away from a judicial process and towards online registration. This has speeded up the company formation process, the quickest incorporation taking only 15 minutes. It is now possible to file annual validation certificates online (which will replace the need to file an annual return). The company search procedure has become an online facility. A new office of the Registrar of Companies has also been established.

Another major change in relation to company formation is that a company's objects will now be unrestricted (unless otherwise specified). This should avoid issues being raised in determining whether the actions of a Guernsey

company are *ultra vires*. It is also possible to have single-member companies, removing the need for nominee members (under the 1994 Law it was necessary for a Guernsey company to have two registered shareholders).

Representation

Under the new Companies Law companies will need to appoint a resident agent in situations where a company is not listed on a recognised exchange, is an investment company, or is another class of company prescribed by the States of Guernsey.

The resident agent should be a director resident in Guernsey or a licensed corporate service provider. The role of the resident agent is to take reasonable steps to ascertain the beneficial owners of a Guernsey company and maintain a list of them at the company's registered office.

Directors

Provisions relating to directors have also been extended. More information must be included in a company's Register of Directors. Along with providing consent to act as director, it will be necessary to submit for a proposed director a declaration of eligibility - a written declaration that the potential director is not ineligible to act as such. For example, a director is ineligible to act when subject to a disqualification order in Guernsey (or an equivalent order in another approved jurisdiction).

Finally, the Law also introduces for the first time a range of duties that secretaries are to fulfil. These range from ensuring that all registers and indexes are maintained, to ensuring the memorandum and articles of association of the company are kept up to date.

Investment funds

As a result of a review by the Finance Industry and Policy Working Party it was felt that Guernsey's existing regime for the regulation of investment funds should be updated. In response to this, the introduction of the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law 2007 will bring

the regulation of closed-ended funds within the remit of the Protection of Investors (Bailiwick of Guernsey) Law 1987, as amended. This Law currently only applies to open-ended funds.

This change will further enhance the transparency of the regulation of closed-ended funds in Guernsey. A clear set of rules for such funds is to be published dealing with disclosure and continuing obligations that are currently provided for on a more informal basis. The amendment also provides for the delineation between two types of investment funds. Registered funds will not be formally regulated in Guernsey. Accordingly it will be possible to establish them much more quickly than funds that are regulated in much the same way as existing Guernsey funds.

These progressive changes to existing tax, company and regulatory laws should help maintain Guernsey's status as an attractive offshore centre.

Financial and corporate

Recommended firms

Tier 1

Carey Olsen
Ozannes

Tier 2

Ogier

Tier 3

Babbé
Collas Day

"Whether it's cows or financial services, the islands [of Guernsey and Jersey] will always compete with each other," says a partner at one of Guernsey's leading firms.

Guernsey has been quick to replicate its rival's popular incorporated-cell structure - "to neutralise Jersey's advantage", in the words of one lawyer. The corporate model was introduced in Jersey in early 2006, and already partners say that clients in Guernsey are finding it more useful than expected.

Changes to the Guernsey Company Law have the same rationale behind them. "Most offshore jurisdictions like to move in line with each other," says one partner. "It's not radical, but it's going to enhance competitiveness."

The changes are aimed at increasing flexibility by moving from a capital protection base to a solvency base, and have been welcomed by clients. With increased consolidation in the offshore legal market - exemplified by this year's best-friends agreement between Maples and Calder and Carey Olsen - multi-

jurisdictional firms can hope to benefit from similar product offerings throughout the offshore community.

"Ultimately, it's all about what's best for the client," says one partner. "To be honest there's no real difference between the Channel Islands jurisdictions, and it's more a matter of personal preference for the client."

Firms with a presence in both Jersey and Guernsey may find it easier to be complacent about the two jurisdictions' similarities, but those based on only one island may begin to look for partnerships in this increasingly competitive market.

While lawyers have not seen any slowdown in work since the credit crunch hit, the nature of the work has shifted. There is more focus on debt funds, vulture funds and real-estate funds all looking to pick up bargains as the property market weakens.

Commodities and infrastructure funds are also growing. "I think you'll still find increased demand from the Far East and the Middle East for commodities," says one partner at a leading firm. "Emerging economies especially are still needing to build infrastructure."

Carey Olsen

Headed by Graham Hall, Carey Olsen stays at the top of the tree after a strong transactional year. Much of the talk about Carey Olsen this year has been about its new best-friends agreement with Cayman firm Maples and Calder. The agreement, signed in January 2008, gives both firms coverage across the most prominent offshore jurisdictions, which will most likely pay dividends for the firm down the line.

Nigel Carey is routinely named as one of the leading lawyers in Guernsey for the strength of his commercial work, and boasts strong contacts from his former role as commissioner of the Guernsey Financial Services Commission.

Carey led the firm on one of its standout corporate mandates - advising Duke Street Capital on the Guernsey elements of its £260 million acquisition of CI Traders. The deal was the largest M&A transaction in the Channel Islands, and covered a range of issues including due diligence, pensions, regulatory and competition law.

Russell Clark and Konrad Friedlander led a Carey Olsen team which worked alongside Allen & Overy to advise Barclays on Guernsey and Jersey law on the bank's acquisition of Walbrook - the former Deloitte & Touche trust company. Carey Olsen advised on a range of matters, including regulatory, competition and company law issues.

Carey Olsen is also typically active in the investment fund market. Graham Hall this year led a team on one of the firm's most notable deals, when it acted as Guernsey legal advisor on the establishment of the Global Infrastructure Partners fund - a \$5.64 billion joint venture between Credit Suisse and General Electric.

Andrew Boyce also led a team which advised Pai Partners on the establishment of the Pai Europe V fund - a €5.5 billion closed-ended private-equity fund consisting of a group of limited partnerships targeting mid-to large-cap buyouts in continental Europe.

Leading lawyers

Nigel Carey
Graham Hall

Ozannes

Ozannes advises on the full range of offshore services, and now boasts an up-and-coming Jersey office which completes its Channel Islands offering. Peter Harwood is universally recognised as the firm's leading light by clients and competitors alike, while Gavin Farrell is noted by peers as a strong investment fund lawyer.

One of Ozannes' standout roles was advising Cenkos Channel Islands on its placement of 1.4 million shares on the Channel Islands Stock Exchange (CISX) - the first primary listing of a local trading company on the CISX. David Moore led the firm on the transaction, in which Ozannes utilised its associated CISX offshoot Ozannes Securities to provide corporate advice, act as placing agent and structure the company in preparation for its listing.

Peter Harwood and Edward Prentice led an Ozannes team which acted for the Bank of Scotland on an acquisition financing facility to Sandpiper for its £260 million purchase of the CI Traders Group. A security structure was put in place by Ozannes, which involved over 60 companies and 50 properties in Guernsey and Alderney.

Gavin Farrell showed why he is so well-regarded by the market when he led a team advising on the Guernsey and Jersey law aspects of Invista Real Estate's sale of a £325 million residential real-estate portfolio to the Wellcome Trust.

In the investment funds market, Ozannes' highlight saw David Moore represent Barbican Reinsurance Company on the establishment of a hedge fund which backed and funded a new insurance group. The hedge fund is operating in the UK through an integrated Lloyds vehicle, and is backed and underwritten by a Guernsey holding company and a new Guernsey reinsurance company.

Leading lawyers

Gavin Farrell
Peter Harwood
David Moore

Ogier

Ogier was boosted this year with the hire of partner Nick Gamble from Freshfields Bruckhaus Deringer's London office in November 2007. Gamble slots into an already reputed team boasting well-regarded partner William Simpson.

Competitors are generous with their praise of Ogier, describing it as a firm on the up - particularly in the funds market. "They're making a big play for a larger share in the investment fund markets," says one rival partner.

One of the firm's highlights this year was winning a role on Duke Street Capital's £260 million acquisition of CI Traders. The firm used a Chinese-wall arrangement on the deal, with William Simpson providing advice to the target, CI Traders, and Roger Le Tissier advising Duke Street Capital.

Le Tissier also played a role alongside Freshfields to provide Guernsey legal advice to UK bank Northern Rock and its Guernsey subsidiary on regulatory and banking issues following the bank's funding crisis.

In addition, Ogier worked alongside Macfarlanes to act as Guernsey legal adviser to RBS International Services on its sale of RBS International Securities Services - a 70:30 joint venture between the Royal Bank of Scotland and The Bank of New York - to BNP Paribas in June 2007.

Leading lawyers

Roger Le Tissier
Marcus Leese
William Simpson

Collas Day

Collas Day drops down to the third tier after commentators noted that the firm has been less visible in the market and its growth has somewhat stagnated. The firm still contains the well-regarded duo of Sean Cheong and Ian Kirk, who were active in restructuring field this year as the markets continued to slide.

One highlight was winning a role on the Eurotunnel refinancing in June 2007, with Ian Kirk advising Deutsche Bank and Goldman Sachs on the Guernsey elements of the debt restructuring.

Jason Romer also led a team which acted for the International Finance Corporation in its investment in a Guernsey holding compa-

ny, and also acted on the restructuring of the group to facilitate further financing.

Ian Kirk was called upon to advise the vendor and its shareholders on the sale of fiduciary services provider The Walbrook Group to Barclays in late May 2007. Another notable transaction saw Sean Cheong and Paul Wilkes act as lead counsel to RBS on a financing facility to Guernsey airline Aurigny for its purchase of two aircraft.

Leading lawyers

Sean Cheong
Ian Kirk