

Jersey

Chamber of commerce:

Jersey Chamber of Commerce and Industry
19 Royal Square
JE1 4HF St Helier
Jersey
Tel: +44 1534 72 45 36
Fax: +44 1534 73 49 42
Email: admin@jersey-chamber.co.uk
Web: www.jerseychamber.com

Professional body:

The Law Society of Jersey
Don Street
JE4 9WG St Helier
Jersey
Tel: +44 1534 50 40 00
Fax: +44 1534 50 44 44
Email: secretary@jerseylawsociety.je
Web: www.jerseylawsociety.je

Unregulated funds: the final piece in the regulatory jigsaw

Jonathan Rigby and Ben Robins
Mourant du Feu & Jeune
Jersey, Cayman, Guernsey and London

Jersey has long enjoyed an excellent reputation as a jurisdiction in which to establish investment funds. For decades Jersey funds have been used to raise money for investment in diverse asset classes including real estate, venture capital and hedge funds. In 2007, the net asset value of funds under administration in Jersey increased by 37% to £246 billion.

Promoters of investment funds can choose between a number of offshore jurisdictions. But what distinguishes Jersey from competitors such as BVI, Cayman and Guernsey is that since the introduction of an unregulated funds regime in February, Jersey stands alone in offering a full spectrum of fund regulation, from rigorous regulation of publicly offered retail funds through to unregulated regimes, with other, lightly regulated regimes in between. This range of regulation makes Jersey unique and adds significantly to its attractiveness as an offshore finance centre.

This range of fund regulation by the Jersey Financial Services Commission (JFSC) reflects the historic development of Jersey's funds industry and the JFSC's willingness to adapt regulation to reflect changing markets. As the industry grew in the eighties, funds generally targeted retail investors, investing in assets such as equities, currencies and commercial real estate.

The regulatory regime that was created (which still applies to retail funds today) involved close JFSC scrutiny of the fund's promoter, full JFSC review of fund documentation and statutory investment restrictions. Subsequently, as investors and investment strategies in Jersey funds have become more sophisticated, the JFSC has introduced a number of lighter-touch regimes (such as the expert fund regime) and has re-focused on

regulation of the local providers of services to Jersey funds, rather than the funds themselves.

Recognising that Cayman has enjoyed much success with its own unregulated regime for closed-ended funds (and particularly hedge funds), the JFSC has worked with the funds industry to create two new, wholly unregulated regimes in Jersey, one for unregulated eligible investor funds (which is only offered to certain eligible investors) and another for unregulated exchange-traded funds (listed on an approved exchange or market).

Key features

(i) Unregulated eligible investor funds (UEIFs)

- UEIFs may only be offered to highly sophisticated eligible investors (including those who make an initial minimum investment equivalent to \$1 million; persons whose ordinary business or professional activity includes acquiring, managing or giving advice on investments; and individuals whose property has a total market value of not less than \$10 million).
- UEIFs may be open- or closed-ended and may take the form of a Jersey company, limited partnership or unit trust (and so may be suitable for hedge, private-equity, real-estate, mezzanine and other fund types).
- UEIFs may be listed but only on exchanges or markets that permit transfer restrictions to ensure that only eligible investors may acquire the securities or interests.

(ii) Unregulated exchange-traded funds (UETFs)

- UETFs must be closed-ended and listed on an exchange or market approved by the JFSC (including, among others, Aim, LSE, CIX, Euronext).
- UETFs may also take the form of a Jersey company, limited partnership or unit trust (and so may be suitable for hedge, private-equity, real-estate, mezzanine and other fund types).

There is no need to appoint any Jersey-based services provider (such as a manager or administrator) in relation to a UEIF or UETF, but the following conditions apply:

- (i) a company must have its registered office in Jersey;
- (ii) a limited partnership must have its registered office in Jersey; and
- (iii) a unit trust or a Jersey limited partnership must have a Jersey company as a trustee or general partner respectively.

There is no requirement to appoint Jersey resident directors to an unregulated fund that is a company.

Are there advantages in using Jersey unregulated funds over Cayman's unregulated regime for closed ended funds? While the minimum investment limit in Cayman (\$100,000) is lower than the level for a Jersey UEIF and it is generally easier to establish local investment managers in Cayman, there is no requirement for local audit sign-off in Jersey, the governmental charges are lower and there is closer geographical proximity to Europe.

Guernsey is adopting a wait-and-see approach, but we suspect that before long it will offer an unregulated regime of its own.

It will take time for the initial trickle of new unregulated funds (a dozen or so such funds have been launched so far) to turn into a flood to rival the huge number of unregulated Cayman funds, but the lack of a formal JFSC promoter-approval process under these new regimes will, for the first time, allow new fund promoters to establish their first funds and develop a track record in Jersey: a mature and well-serviced jurisdiction in a European time zone.

Financial and corporate

Recommended firms

Tier 1

Carey Olsen
Mourant
Ogier

Tier 2

Appleby
Bedell Cristin

Tier 3

Ozannes
Voisin
Walkers

This year the focus is firmly on Jersey's initiatives to up its offering against that of rival offshore jurisdictions. Early 2008 saw the introduction of unregulated fund structures, allowing Jersey to compete on a more level playing field with those jurisdictions traditionally associated with hedge funds.

"This will put Jersey in a much better position to attract fund work which previously went to BVI and Cayman," says a partner at a Jersey firm. "At the moment Hong Kong and Singapore look towards the Caribbean for fund structures, but we hope to get more work from these areas."

The changes to the Jersey Companies Law are similarly being hailed as an example of how Jersey is becoming a truly international offshore jurisdiction.

"Jersey companies law is getting close to the forefront of commercial law globally," says one partner. "I'm not convinced that any other jurisdiction has the full suite of products that we have available to us now."

The question remains as to whether increasing globalisation will reinvigorate the cross-border expansion of law firms. One partner acknowledged that the lack of cross-jurisdictional presence could be dangerous: "There is a risk of the client being exposed to a firm that could service them in both jurisdictions."

So far firms have not shown themselves willing to take the plunge. Carey Olsen and Maples and Calder opted for a best-friends agreement, with Maples ceasing to operate in Jersey, while merger talks between Mourant and Walkers fell through.

Carey Olsen

The start of 2008 saw Carey Olsen announce a best-friends arrangement with Cayman offshore giant Maples and Calder. Under the agreement Maples and Calder will retain an office in Jersey but will use it only to advise on

Cayman law, referring Jersey clients to Carey Olsen and ceasing to practise Jersey law.

The firm has a reputation among its peers for taking a somewhat aggressive stance; but clients seem pleased, with one saying that Carey Olsen "provided a first-class service".

One standout deal saw the firm acting for White Pine Corporation on its merger with Whistlejacket Capital. The deal resulted in the creation of a new merged entity with close to \$18 billion of assets under management by Standard Chartered Bank, and was understood to be the first merger of two structured investment vehicles (Sivs).

Another first on which Carey Olsen advised was the issuance and listing of Investec preference shares on the Channel Islands Stock Exchange (CISX). The issue was fungible with an issue of shares listed on the Johannesburg Stock Exchange. It was the first time an offer had been made only within the Channel Islands, rather than being ancillary to an offer in the UK.

Carey Olsen fielded teams, led by Alex Ohlsson, to act alongside Clifford Chance on two major securitisation deals. One saw Carey Olsen advising CPUK Mortgage Finance in relation to a £750 million securitisation arranged by Merrill Lynch, while the other saw the firm advising Alburn Real Estate Capital, NM Rothschild and Merrill Lynch in relation to a £338 million CMBS securitisation of a UK property portfolio.

On the banking side Carey Olsen was involved in advising both the borrower, G:Res 4, and Barclays Bank as the lender on a £105 million debt facility for the acquisition of a portfolio of UK residential property. This involved two teams, separated by a Chinese wall, and stemmed from the firm's past involvement on deals between the companies.

Edward Quinn, who acted for Barclays, was described by a client as "always helpful and innovative in coming up with new structures".

Another property finance transaction included advising Deutsche Bank on the Curo Stirling Dumfries Retail Park Unit Trust deal, a complex structure involving two Jersey Property Unit Trusts (JPUTs), a UK unit trust and an English limited partnership. The firm also acted for Morgan Stanley on a £360 million financing involving JPUTs and English limited partnerships.

Carey Olsen's corporate team also had a busy year, advising private-equity firms Duke Street Capital and Europa Capital on the Channel Islands legal aspects of their public takeover of CI Traders.

The team also advised Barclays on its acquisition of the Walbrook trust company, and provided advice for a private-equity firm on Jersey takeover laws in relation to its

takeover of Next Generation. Carey Olsen also advised on a number of Aim listings including that of IMSG.

The firm assisted with the IPO of Black Earth. The offering consisted of shares in the form of Swedish depository receipts, listed on the First North exchange in Stockholm for a total value of more than SKr1.6 billion (€172 million).

Carey Olsen has traditionally had a strong presence in the funds market, and this year was no different. Outstanding transactions included acting in relation to the establishment of the first Jersey incorporated cell company (ICC) to list a cell on the CISX using Jersey's new regime for listed funds, acting for Citigroup in relation to the establishment of a \$3.5 billion fund, and acting for Henderson Fund management on the establishment of a £300 million closed-ended Jersey listed fund.

The firm also maintained its strong relationship with Belgravia Funds, acting for it on a range of matters including the establishment of 16 funds, structured as protected cells of Jersey protected cell companies, to invest in real estate across Europe and Asia.

Leading lawyers

Nicholas Crocker
Alex Ohlsson

Mourant

Mourant retains its title as the most ambitious firm in the offshore market. Seemingly minutes after the firm effectively swallowed Quin & Hampson last year it entered merger discussions with Cayman firm Walkers - a move which was widely seen as a response to Carey Olsen's best-friends tie-up with Maples and Calder.

The merger talks eventually broke down, but the firm still managed to grow in size this year, recruiting partners Richard de Basto from Allen & Overy and John Lewis from Collas Day. The lawyers join Mourant along with Neal Lomax, who was a partner with Quin & Hampson.

Despite all the action this year, clients say they still wouldn't hesitate to mandate the firm again: "I find Mourant good in terms of resourcing and depth," says one client.

Mourant is very active in the structured-products market. Robert Hickling and Lisa Le Maistre teamed up on one notable mandate to advise ETFS Commodity Securities and ETFS Oil Securities on the issue of 58 separate types of commodity security under an existing \$4 billion programme. The pair also advised ETFS Oil Securities on the issue of six new types of oil security.

The firm followed this up when Jonathan Rigby and Simon Felton led a team advising

Symphony Structured Products on its launch of 52 new structured equity products (in the form of CISX-listed preference shares) with aggregate subscriptions of almost £1 billion.

Ben Robins, Rani Khiani and Veronica Strande were active in the burgeoning Islamic-finance market, working alongside Clifford Chance to advise HSBC Middle East (Jersey) on the issuance of trust certificates by its Cayman subsidiary HBME Sukuk Company - with the proceeds used to acquire a variety of *shariah*-compliant assets originated by HBME.

The same team also advised HBME on the update and \$4 billion increase of its existing debt issuance programme.

On the corporate side, Jacqueline Richomme advised on the establishment of a Jersey holding structure for the acquisition of an interest in the GP2 motorsport series. The structure for the acquisition was integrated into CVC European Equity Funds' holding and financing structure for its investment in Formula One motorsport.

Leading lawyers

Edward Devenport
Simon Gould
Robert Hickling
Jacqueline Richomme

Ogier

Ogier continues to grow its team with the addition of Islamic-finance specialist Michael Khajeh-Noori, an ex-Clifford Chance lawyer who comes to Ogier from a two-year stint at Dresdner Kleinwort.

Chris Byrne's securitisation team won a role on the first merger of two Sivs, acting for Standard Chartered Bank on the merger of Whistlejacket Capital and White Pine Corporate. The newly merged entity had approximately \$18 billion of assets under management by Standard Chartered Bank.

Another outstanding deal saw Chris Byrne and colleague Peter Longstaffe advising Greensands Investments, a Jersey-domiciled bid vehicle capitalised by a consortium led by JP Morgan Asset Management and Australia's Challenger Infrastructure Fund, on its successful bid for Southern Water. The consortium, which also comprised UBS, Hermes and Access Capital Partners, paid £1.3 billion for Southern Water and assumed £2.9 billion debt.

Ogier also won a role on Diversity Funding No 1, a deal which was voted the securitisation deal of the year at the *International Financial Law Review's* awards in March 2008. The deal involved the sale of a warehoused portfolio of Northern Rock commercial mortgages to a Jersey mortgages

trustee. Matthew Swan and Alasdair Hunter were instructed by Lehman Brothers International in relation to this £1.14 billion standalone commercial mortgage-backed securitisation, providing Jersey legal advice as well as UK and Jersey administration services to the structure.

Another notable transaction saw Ogier advise on AIDG Jersey Acquisition, a company formed on behalf of funds managed by Advent International Corporation on the Jersey law aspects of its public offer for Domestic & General Group using a Jersey corporate holding structure for the acquisition vehicle. The deal, led by Michael Lombardi, was valued at £523 million.

Ogier continued to benefit from its relationship with Northern European Properties, a Jersey-listed fund investing in real estate in the Nordic and Baltic regions and Russia, advising the firm on its Euronext listing. Ogier had previously been involved in the firm's IPO on Aim in 2006.

The firm's funds practice is led by Richard Thomas, who has been chairman of the Jersey Funds Association since July 2007. The practice had another strong year working across the full range of funds products now available in Jersey.

A team led by partner Nick Kershaw acted as Jersey legal adviser to Index Ventures Growth I on the establishment of a £400m Jersey limited partnership private-equity vehicle, structured as an expert fund, to invest in late state-venture capital and growth companies in Europe and the US.

Nick Kershaw also headed up the team acting as Jersey legal advisor to Treasury Holdings in the establishment of China Real Estate Opportunities, a Jersey company listed on Aim, to invest in commercial real estate in China.

Leading lawyers

Chris Byrne
Nick Kershaw
Michael Lombardi
Richard Thomas

Appleby

Appleby suffered a blow at the end of 2007 with partner Simon Howard's departure. But clients remain pleased with the firm's service, with one commenting: "I am very happy with Appleby and use them for offshore structuring. They are pretty responsive and reasonably priced."

The firm continued to boost its presence with Sarah Bolton, who was previously based in the Cayman Islands, moving over to the Jersey office.

Wendy Benjamin led the firm's finance team when it advised Red and White Securities on the £75 million purchase of its 14.6% stake in Arsenal Holdings. The deal, combined with further acquisitions also advised on by Appleby, has given Red and White a stake of around 23% in the club, making it one of the largest shareholders. "Wendy Benjamin's work is thorough and commercially-focused" says one client.

Appleby also advised CLS Holdings on the £1.2 billion financing of the Shard of Glass building, also known as London Bridge Tower.

Another key deal saw Andrew Weaver leading a team advising Alexander Forbes on finance and security matters connected with the \$1.21 billion LBO of the group by a consortium of private-equity buyers, led by British fund Actis.

The firm continues to be strong on funds work, integrating its practice across jurisdictions to provide more options for clients including fund migrations from the Cayman Islands to Jersey.

Andrew Weaver and Mark Lewis acted for a number of high-profile clients. Their recent work has included advising London & Capital on its first Jersey-domiciled fund, acting for PMM Partners on the formation and launch of the first new fund to be formed under the new Jersey listed fund guide, and acting for Stirling Squire Capital on the launch of its second private-equity fund.

The pair also acted for Meinl Bank and Meinl European Land, the largest property investment fund in central and eastern Europe, on a strategic investment by a joint venture between Citigroup and Gazit Globe.

Bedell Cristin

Bedell Cristin has capitalised on the ever-expanding funds market in Jersey this year, building on its reputation as a strong and innovative funds practice.

The firm is praised by its clients for its consistently high standards. "I'm very satisfied with their service - if I wasn't I wouldn't continue using them," says one.

Specialist funds are still a strong area of work in the Channel Islands, and Bedell Cristin took full advantage by advising Czech promoter Discovery Group on the establishment of a fund raising €120 million for investment and real-estate development in central and eastern Europe.

Other notable transactions in the funds area included advising Fondinvest Capital on the establishment of a fund of secondary private-equity funds with a target size of €400 million, and acting for Tundra Alternative Energy Fund on the establishment of a Jersey

expert fund with a long/short equity strategy with a focus on alternative energy.

Peter Byrne heads up the corporate practice, which has seen a steady flow of work from overseas companies, in particular from China, India and Russia, looking to establish Jersey vehicles for listing on Aim.

The firm maintained its relationship with Highland Gold Mining, acting for the client on the £197 million sale of a 40% stake in the business to Roman Abramovich's investment vehicle Millhouse.

Leading lawyers

Peter Byrne
Richard Gerwat
Emily Haithwaite
Shane Hollywood
Martin Paul

Bill Gibbon is an acknowledged specialist in the field of Islamic securitisation and has advised on several *sukuk* (Islamic bond) offerings as well as *shariah*-compliant collective investment funds and corporate structures. Gibbon's clients include a large number of Gulf Co-operation Council members.

Managing partner Ian Strang is "a very experienced chap" according to a partner at another Jersey law firm. This year he led teams advising on major corporate financing projects, including the refinancing of a London landmark office property. In another major transaction Voisin acted for the World Bank in relation to a loan to a Russian media group.

Leading lawyers

Ian Strang

Ozannes

Ozannes' Jersey practice, set up in 2006, is now starting to receive recognition among its peers, especially in relation to funds work.

Mark Chambers, who led three large funds transactions this year, was described as "a decent guy and a sound operator" by a partner at another leading Jersey law firm.

Ozannes advised Rathbones on the launch of its first equities-based investment fund, which was structured as a protected cell company. The firm also established closed-ended investment and limited-liability companies for Ignition Romanian Land Fund and MD Fund.

Elsewhere, partner Marcus Stone has been building the firm's presence in Jersey's financial and corporate markets, acting for First Active Bank Channel Islands and RBS.

Another deal saw Ozannes acting for Cenkos Securities and Cenkos CI on the establishment of Cenkos Jersey.

Finally, the firm acted for Syrian Sugar Refinery Holdings, which were guarantors on a \$60 million facility provided by Housing Bank for Trade and Finance to the National Syrian Sugar Company.

It is premature to speculate whether Ozannes will ever achieve the same high status in Jersey that it enjoys in Guernsey, but, as a partner at one of its competing firms says: "It's early days, and we'll see how that goes."

Voisin

Voisin has been building a name for itself as a firm with a specialty in *shariah*-compliant fund work. A partner at a leading Jersey law firm says that given Voisin's reputation as a niche firm this was "quite a sensible thing for them to have done from a business point of view".