

Guernsey

Chamber of commerce:

Guernsey Chamber of Commerce
Suite 1
16 Glatigny Esplanade
GY1 1WN St Peter Port
Guernsey
Tel: +44 1 481 727483
Fax: +44 1 481 710755
Email: office@guernseychamber.com
Web: www.guernseychamber.com

Professional body:

The Guernsey Bar
Le Marchant House
Le Marchant Street
GY1 4HP St Peter Port
Guernsey
Tel: +44 1 481 723 723
Email: bar.secretary@aohall.com
Web: www.guernseybar.com

Developments in corporate finance law

Ian Kirk and Gareth Morgan
Collas Day
St Peter Port

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

Companies law

The Companies (Guernsey) Law 2008 came into force on July 1 2008. The Companies Law consolidated the then existing company laws and ordinances, and incorporated a number of improvements. It is a comprehensive and modern piece of legislation.

Perhaps the most significant change under the new Companies Law is the abolition of the doctrine of capital maintenance – an approach similar to that adopted in New Zealand. Under the previous company laws 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 conditions.

- (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 minimum capital requirements of 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, the solvency test applies to a number of corporate processes. These include migrations, amalgamations, reductions of share capital and redemptions of shares.

Investment funds

In December 2008 the Guernsey Financial Services Commission (GFSC) published rules that finalised the move of closed-ended investment schemes from the regime under the Control of Borrowing (Bailiwick of Guernsey) Ordinances 1957 (COBO) to the regime under the Protection of Investors (Bailiwick of Guernsey) Law 1987 (POI).

The reason for this shift is that POI provides a more transparent regime for the regulation of funds, along with a greater consistency in the treatment of open and closed-ended schemes.

Further amendments have provided that now both open and closed-ended schemes have the option to be categorised as either authorised or registered schemes. The key difference between these schemes is that registered schemes allow for the fast-tracking of applications and provide a lower level of regulation than authorised schemes.

Changes to COBO

Prior to the new Companies Law and the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law 2007, it was necessary to obtain the consent of the States of Guernsey Policy Council, acting by the GFSC, for the issue of shares in a Guernsey company. This requirement existed under COBO.

This requirement was subject to an overall exemption where the amount raised during any 12-month period was less than £500,000. Under the new regime, it is not necessary to obtain consent under COBO for the issue of shares, unless shares are either: paid for (partly or in whole) otherwise than in cash; issued to discharge (partly or in whole) any capital liability; or redeemable shares, if the purpose or effect of the transaction consists of, or includes, the capitalisation of profits or reserves.

New prospectus rules

Concurrent with the amendments to COBO in 2008, the GFSC was granted the power to prescribe rules governing the disclosure of information in prospectuses. This resulted in the publication by the GFSC of the Prospectus Rules 2008. These govern the distribution and circulation of prospectuses in relation to registered, closed and open-ended investment funds, certain offers by Guernsey companies under POI of any category 2 controlled investment (which is generally any form of security) or equally similar offers made in the Bailiwick of Guernsey by a company located anywhere in the world.

Investor protection

Changing market conditions are having an obvious effect on the risk appetite of investors in selecting the right investments. Increasingly, investors are mindful of the level of regulation in place in the jurisdictions where their investment vehicles are established. As a response to this, Guernsey finalised the detail on a number of measures that have been in the pipeline and, in late 2008, enacted three new laws dealing with investor protection.

(i) The Insider Dealing (Securities and Regulated Markets) (Amendment) Order 2008.

(ii) The Protection of Investors (Market Abuse) (Bailiwick of Guernsey) Regulations 2008.

(iii) The Protection of Investors (Administration and Intervention) (Bailiwick of Guernsey) Ordinance 2008.

The first two of these laws clarify the operation, scope and application of each of the offences of insider dealing and market abuse under Guernsey law. The third law grants certain powers to the GFSC enabling it to apply for administration orders from the court, under which it can appoint an administrator over the business of a regulated entity.

Conclusion

Such modern and progressive changes to existing company and regulatory laws and regulations ensure that Guernsey remains at the forefront of specialist financial centres.

Financial and corporate**Recommended firms****Tier 1**

Carey Olsen
Ozannes

Tier 2

Ogier

Tier 3

Collas Day

Tier 4

Babbé
Bedell Cristin

The Companies (Guernsey) Law 2008 came into force last July; companies can now go into administration in Guernsey and the Act also legislates for schemes of arrangement and squeeze outs.

“The Act has allowed us to do things that we were doing already, but in a more straightforward and strategic way, and with statutory backing. It makes things simpler and more certain for clients,” says one partner at a leading Guernsey firm.

And while you may think anything that encouraged clients to undertake legal services would be met with open arms at present, praise for the Act has not been universal.

“Some people are moaning about the companies Act,” says another Guernsey partner. “There are good things and bad things: more flexibility and, of course, the schemes of arrangement, but there are also complaints that things are more difficult.” The partner adds: “Though lawyers as a profession are quite conservative and don’t really like change.”

Such lawyers might find the market as a whole a bit of a bother, as corporate and finance partners on the island say their diet of work has changed drastically. “Things like pure banking work are not a luxury many of us can have, so we extend our remit to dealing with administrations and looking at refinancing and enforcement,” says one partner. “We have been able to take our skill and move to other fields.”

But restructuring is not the only work the downturn has begat. Commentators expect to see some mergers and acquisitions as local companies see sense in consolidation and others look to pick up cheap distressed assets. In

the second quarter, some firms even reported a small increase in financing.

But overall the effects of the downturn on corporate and finance lawyers in Guernsey are the same as for lawyers the world over. “There is a lot more pitching for work,” says one partner. “Clients are more cost conscious. The market is more competitive.”

Carey Olsen

Neither the financial turmoil nor Nigel Carey’s step down from partner to consultant could knock Carey Olsen from its stride this year, as the firm continued to excel. “Carey Olsen is starting to pull away,” says one rival. “They have people who are extremely strong and very client friendly. They are also very cohesive; nobody else, as far as I can tell, has this.” The competitor adds: “I get this information from clients who come to me after working with them, and they are always positive.”

And though competitors warn against complacency, Carey Olsen’s grip on the top tier is far from tenuous. Possessing an acknowledged star in Graham Hall, the firm’s strong corporate law focus has produced a pool of associates who can hold their own in transactions. “They were quick, proactive and they have great associates,” says one client of the firm. “We were quite amazed by their quality.”

But it is Tom Carey who has been busiest this year. One transaction saw him out front in the firm’s role as lead Guernsey advisor for Resolution on its admission to the London Stock Exchange. The placement completed in December 2008 and was one of the City’s few significant flotations, with the acquisition vehicle raising €700 million.

Tom Carey also led the firm in the merger between Abingdon Investment, a Guernsey closed-ended investment company, and Carador, a listed Irish closed-ended fund. Carey Olsen represented both parties in the merger, which took place as an amalgamation between Abingdon with Carador Guernsey, a wholly-owned subsidiary of Carador created especially for this purpose. The amalgamation was one of the first to be conducted under the Companies (Guernsey) Law 2008, as amended.

Leading lawyers

Graham Hall

Ozannes

Though Ozannes puts a large emphasis on its funds practice, the firm’s financial and corporate capacity is beyond doubt and, among

competitors, Ozannes is known as a firm capable of managing significant transactions.

Clients too are full of praise for the firm. “They have good technical strengths, so they know both their own regime and we can discuss at the right sort of level any innovation which we are trying to bring about, and we get a good client service so we are very happy,” says one client.

The Ozannes team has acted in some impressive transactions this year. In 2009 the firm’s Guernsey and Jersey practices both advised Allianz, Commerzbank and Dresdner Bank on the Jersey and Guernsey legal and regulatory aspects of Commerzbank’s €8.8 billion acquisition of Dresdner Bank from Allianz.

Leading lawyers

Gavin Farrell

Peter Harwood

Ogier

Ogier, the first Jersey firm to enter Guernsey, has continued to strengthen its practice, making up Caroline Chan into partner this year. Despite the firm being well ahead of its non-native competitors, commentators note that in terms of depth of corporate and finance practices there is still a distinction between Ogier and the top firms. Though not much of one. “I have also dealt with Ogier,” says one client of a rival firm, “and they’re pushing pretty hard to be in the top tier, if they are not already there.” The client adds: “The reputation of the firm, at least in this firm, is up there.”

There is no doubt, however, that Ogier retains the services of some top practitioners. Roger Le Tissier is consistently ranked as one of the jurisdiction’s leading lawyers and cements his position acting on high-end deals. He is leading the team advising on the Guernsey fund KKR Private Equity Investors’ (KPE’s) merger with Kohlberg Kravis Roberts. Ogier is advising the independent directors of KKR Guernsey GP, KPE’s general partner. The combined company will be listed on the New York Stock Exchange.

Le Tissier also led on the Irish tidal renewable energy company OpenHydro’s acquisition of an equity interest in Alderney Renewable Energy. The deal concerned a number of commercial and regulatory issues and was completed in November 2008.

Caroline Chan, who is described by one rival as an “excellent lawyer”, is acting in one of Guernsey’s largest liquidations. Ogier was appointed by Begbies Traynor, the liquidators of Wallace Barnaby and Associates Group, which entered itself into voluntary liquidation

under the Companies (Guernsey) Law 2008 in November 2008.

Leading lawyers

Marcus Leese
Roger Le Tissier
William Simpson

Collas Day

Full-service firm Collas Day sits in tier three after commentators noted that although the firm has less of an international reach than some of its competitors, the firm's presence in the jurisdiction and capacity to operate in significant transactions outstrips its tier four rivals.

"The firm is very commercial and when they come up against a high level of opposition they do their best to solve matters," says one City client. "They keep the minutia away from us – which is what we want – and they are not picky. They just get it done." Another client says: "They are easy to work with, there are never any surprises on the bill and they give good advice."

Collas Day is now going through a period of expansion; the firm opened an office in London in July 2008 and is expected to establish itself in the Jersey market in 2009.

Two of the firm's partners, Sean Cheong and Ian Kirk, are regarded as leading lawyers in the market, while senior associate Paul Wilkes also comes in for some praise. "He's a great lawyer," says one client of Wilkes. "He is always very committed and makes himself available."

In the first quarter of 2009 Ian Kirk led a team in one of the firm's standout transactions – acting for Victoria Oil and Gas in Guernsey's first scheme of arrangement under the new legislation. The matter involved Victoria Oil and Gas's takeover of Bramlin, both Aim-listed companies.

Leading lawyers

Sean Cheong
Ian Kirk

Other ranked firms

Bedell Cristin enters the rankings after competitors reported an increased visibility and clients a highly-competent service.

"We get a very good service from Mark Helyar," says one client. "They are a small firm, so we get a high level of service, which feels very personal. And Mark is quite well respected in the local community and gives good feedback on what's going on in the market, so it's not just pure legal advice."

In August 2008 Helyar acted for Condor in its sale to the Macquarie European

Infrastructure Fund 2. The firm also represents the same client in its subsequent re-financing.

Investment funds

Recommended firms
Tier 1
Carey Olsen
Ogier
Ozannes
Tier 2
Collas Day
Tier 3
Babbé
Bedell Cristin

"Investment funds are probably now the biggest contributor to Guernsey's finance industry GDP," says one partner at a leading Guernsey firm. Consequently, firms are increasingly focused on seizing work.

And while the downturn reduced the flow of new structures, particularly in the first quarter of 2009, the new funds regime that came into force on December 15 2008 picked up some of the slack, providing firms with advisory work as existing clients looked to change structures.

The new regime separates all funds into two categories – registered and authorised investment schemes. Both have their advantages. While registered investment schemes are regulated with a lighter touch and provide for a quick turnaround, appealing to experienced clients, the authorised scheme's more comprehensive regulation, according to one partner, "chimes with the market".

The partner adds: "Whereas before clients just wanted to get their hands on the money as soon as possible, now they want to take longer to get a stamp of approval that they get with these funds."

The newfound caution that the downturn has brought with it has also made fund-raising a difficult process. "A lot of people are having trouble fund raising; we had a fund last year which raised nothing," says one partner.

Even secondaries are finding it tough. "For these guys it is a good time; it could be boom time for them, but it's still taking longer for them to raise money. We're talking about nearly one year to raise the money, whereas before it would take three months."

Carey Olsen

Carey Olsen's intimidating market share of fund work in Guernsey ensures the firm a top tier ranking in the jurisdiction's debut funds table. Like most firms Carey Olsen has done

its fair share of restructuring work this year but, in the second quarter, when interest in new funds resurfaced, the firm's reputation and deep roots in the market meant that despite a diminished market and strong competition, they were still sought after by clients.

Though the firm no longer boasts Guernsey's largest funds team – that accolade now belongs to Ogier – Carey Olsen's team holds plenty of class. Graham Hall and Tom Carey are both highly-rated practitioners whose methods and knowledge encourage praise from a broad spectrum of commentators. "They know their stuff and they're good to deal with," says one rival. "They know what the issues are and don't get bogged down and waste time – they get the job done."

Graham Hall in particular is regarded as one of the jurisdiction's leading funds practitioners. He led the team that advised Clariden Leu Bank Hofmann on a number of group restructuring matters, which included mergers between Bank Hofmann and Swissrent, US Stocks and Dollarrent. Hall also headed the team that acted as lead advisor to Mubadala Infrastructure Partners, a joint venture Guernsey Limited Partnership between Mubadala, Credit Suisse and General Electric, which raised €215 million in its first public closing.

Tom Carey headed the team that acted as lead Guernsey advisor to Germany 1 Acquisition. The acquisition company was launched on Euronext Amsterdam and placed €275 million in shares and warrants. Carey assumed the same role when advising BH Global on its listing on the London Stock Exchange. The close-ended investment company raised €1 billion.

Leading lawyers

Graham Hall

Ogier

Despite commanding a smaller share of the market, Ogier's level of service and expertise puts the firm on a par with Guernsey's top funds practices, say commentators. "We have worked with Carey Olsen, Ozannes and Ogier, and we would rank them all together," says one client.

"Ogier is a very strong firm," says another client. "They have a broad branch and quite a few good people there."

And the firm's ascent has not gone unnoticed by competitors. "Ogier has certainly increased its presence," says one rival. "They are aggressively marketing themselves and targeting the major fund clients here. They have some very good lawyers there as well. We see them more and more on the other side of fund deals."

Ogier boasts the largest funds practice in Guernsey and, in William Simpson and Roger Le Tissier, two of the jurisdiction's foremost funds practitioners.

Simpson led on a deal that saw Ogier advise on the establishment of Da Vinci CIS Private Growth Fund, a registered, closed-ended, Guernsey fund. As well as being listed on the Channel Island Stock Exchange, it was also the first listing on the London Stock Exchange's Specialist Fund Market, raising €79 million.

Leading lawyers

Roger Le Tissier
William Simpson

Ozannes

Ozannes made up Andrew Walters to partner in January 2009 and already the young lawyer is well recognised by peers, who mention him in the same breath as distinguished partners Gavin Farrell and Peter Harwood. "An eager young chap – I've heard quite a lot about him," says one competitor of Walters. "He's commercial and he really knows offshore counsel," says one client.

The move will strengthen Ozannes' funds practice – which is reputed for focusing on its prestigious City firm clients – as Peter Harwood is set to step down as partner at the end of the year, but will stay on as a consultant.

Walters and Harwood worked together on two of the firm's most high-profile transactions. The first was London-listed fund Bluecrest Allblue's raising of £109 million through the issue of convertible C shares in June 2008. The following month the pair advised New Star Absolute Return Fund, a Guernsey protected cell company, in connection with a scheme of reconstruction and winding up of the Aim-listed, closed-ended company.

Gavin Farrell is another of the firm's leading lawyers. "He was very good," says one client. "Responsive and generally available after hours in a way that a lot of Guernsey counsel aren't."

Farrell posted a significant deal in July 2008, acting as Guernsey counsel to the Candover 2008 fund, which had a target of €5 billion. The firm worked in concert with US funds specialists Kirkland & Ellis, and was responsible for the fund's structure as well as providing advice in respect of material agreements and ancillary arrangements.

Leading lawyers

Gavin Farrell
Peter Harwood
Andrew Walters

Collas Day

Collas Day's funds practice is one that is up and coming, rather than firmly established within the market. But the firm has developed a niche, acting in smaller, one-off deals and less mainstream structures. "It was very good working with them," says one client. "They were very friendly and clearly very good at what they do."

"I would put Collas Day in tier two," says another. "I've worked with Babbé and, speaking from a funds point of view, Collas Day has much more experience."

Ian Kirk is regarded as "solid" by peers, while Sean Cheong's expedience impresses clients. "She's clearly very diligent, nice to work with in that she's pretty realistic and doesn't kick up a fuss, and she can take the step up and address things," says one client. "She handled a difficult client pretty well for us. Most lawyers can do the work but it's how they handle things – she was always happy to speak with us."

Cheong also acted on one of the firm's leading deals: incorporating the protected cell company Pre-X Capital Guernsey as the first registered investment fund under the new funds regime. Two new sub-funds that were launched by Pre-X will invest in companies at pre-IPO or similarly early stages.

Other ranked firms

Bedell Cristin has an emerging funds practice led by Christopher Anderson. "He knows the area," says one client of Anderson's. "He has great depth of experience and knowledge and brings a practical approach to the issues of the day."

Though some commentators believe it is too early to ascertain the firm's commitment to Guernsey, Bedell Cristin has sufficiently impressed its peers and clients to merit a ranking. "They know their way around the Guernsey funds position and they are very pragmatic," says one client.

Other notable firms

Mourant du Feu & Jeune is steadily increasing its presence and reputation within the market. "The firm has a good brand," says one client. "The Guernsey operation is quite new, so it's quite entrepreneurial and go-getting. But they also have the back-up of the Jersey practice."

"Mourant is superb," says another client. "Particularly Darren Bacon who is excellent. He has really stepped up their practice in terms of funds. He is hugely responsive and very commercial."

Bacon acted on the firm's standout transaction of 2008: the establishment and listing

of the €360 million private-equity fund Global Mena Financial Assets. The fund invests in the financial services sector in the Middle East and north Africa.