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Unregulated funds: the final piece in the regulatory jigsaw

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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, CISX, 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-served jurisdiction in a European time zone.

Financial and corporate

Recommended firms	
Tier 1	Mourant du Feu & Jeune Ogier
Tier 2	Bedell Cristin Carey Olsen
Tier 3	Appleby
Tier 4	Ozannes Voisin & Co Walkers

The beginning of the economic downturn was a low point for lawyers in Jersey, as one partner explains: "There was a period when banking had dried up but companies weren't in enough trouble to need restructuring – or the banks just weren't doing anything about it – when one in four fee earners weren't doing anything."

The market is no longer so quiet. And though the lack of financing is still squeezing the amount of new money deals, particularly in pure M&A, restructuring work is in full flow. "The practice is busy, but shifting to enforcement and insolvency work," says one partner, who adds: "But there is still the odd bit of prestige work out there as banks will still lend to the right client with the right covenants."

Towards the end of 2008, two new avenues of work opened up for Jersey lawyers. First was the migration of PLCs. These redomiciliations saw companies (many of which were listed on the FTSE250 or FTSE100) migrate, in most cases to Ireland, after establishing a Jersey holding company as the group's ultimate parent company. It was a fillip for the jurisdiction as a whole.

"They are using Jersey law because our companies law is very flexible," says one partner. "And it's quite nice that Jersey has been chosen on the basis of its law instead of tax, as they could have chosen Ireland."

The second stream of work was the resurgence of cash box structures, used by UK banks to raise capital as they tried to catch what little liquidity there was in the market.

But partners have also reported a more cautious approach by clients. "People are scrutinising our work more closely because legal advice now hits a company's bottom line," says one partner. "Clients are asking to view whole teams now, not just the partners, and vetting the whole team, which is pretty switched on of them. And we are being a lot

more careful about the advice we give too, since people are a lot more litigious."

Fickle though clients may be, most partners would be grateful for a few more of them in banking. "Banking work is dead," says one partner. "I used to have six or seven new loan deals at any time, and now I have one – and that's one more than some of my colleagues have."

Mourant du Feu & Jeune

Mourant stands firm in tier one this year, after even competitors admit: "There is blue water between Mourant and Ogier, and the rest of us." And the firm continues to grow. In the past year it has made up former senior associates Michael Williams and James Hill into partners.

The practice is lauded for the consistency of quality among its lawyers. "They were good technically, commercially and they were very responsive," says one client.

But, as good as it is, Mourant has been hit by the downturn as much as anybody, and partners within the firm acknowledge that the banking practice is now, in effect, a restructuring practice. But in areas of practice that are still active, the firm is heavily involved, particularly in redomiciliations, acting in five of the eight deals that were announced in 2008.

In one redomiciliation deal, Robert Hickling and Michael Williams advised pharmaceuticals manufacturer Shire. The transaction was a collaborative effort, with Mourant working alongside Slaughter and May and PricewaterhouseCoopers. Hickling and Williams also advised WPP, the FTSE 100 listed communication services company, on its redomiciliation, working alongside Allen & Overy and Ernst & Young.

Jonathan Walker, who is described as a "very good finance and corporate lawyer" by one peer, advised Standard Chartered on its €2 billion rights issue. The transaction was particularly pertinent as it utilised the cash box structure, which emerged as a popular trend towards the end of 2008 and beginning of 2009.

On the same deal, Simon Gould and Richard Withers advised the Singaporean sovereign wealth fund (and Standard Chartered's largest shareholder) Temasek, which underwrote part of the deal.

Leading lawyers

Edward Devenport
Simon Gould
Robert Hickling
Jacqueline Richomme

Ogier

Ogier is credited by peers with possessing one of the largest and most respected finance practices in Jersey. But that is not the only reason the firm remains top tier. The depth, breadth and access to resources that the firm possesses separate it from the herd, according to rivals. And one competitor adds, "Ogier and Mourant are still considered to be the market leaders because of their substantial blue-chip client base."

Clients are equally quick to praise the firm. "They are always excellent; prompt responsive, yet surprisingly available for a Jersey firm. I have dealt with a few firms in that jurisdiction where it's a case of phones off at 5pm, but Chris Byrne was great," says one partner at a UK magic circle firm. "I know they can deliver for us on high-pressure and high-quality deals."

Chris Byrne, a leading figure in corporate law in Jersey, led on the firm's M&A mandate for Shell. The deal involved the sale of a network of 27 retail service stations, commercial fuel and heating oil operations, and associated services in Jersey and Guernsey, and had to be approved by the Jersey Competition Regulatory Authority. Ogier's role spanned a range of issues including corporate, regulatory, competition, employment and pensions law. The transaction completed in August 2008.

The firm has also acted for a slew of banks doing rights issues through the establishment of cash box companies. Beginning in December 2008, Marc Yates led the team that acted for RBS, Lloyds TSB and HBOS in deals, underwritten by HM Treasury, worth €23.3 billion, €6.4 billion and €13.4 billion respectively.

Leading lawyers

Chris Byrne
Michael Lombardi
Richard Thomas

Bedell Cristin

"I was impressed by their lawyers – they think hard about what they do," says one rival of Bedell Cristin. "They take good positions, have good views and give good advice," says another competitor.

Bedell Cristin's financial and corporate practice was widely praised this year, with some commentators going so far as to say it has been underrated. The firm is known for its capacity in financing and M&A, and with the recent emergence of its Guernsey practice, the firm's stock is set to rise with clients, as it now offers a one-stop shop across the Channel Islands.

And while some commentators insist the firm lacks the resources possessed by Jersey's larger top-tier firms, clients seem not to mind. "The service the firm provides is very good," says one London client. "They are efficient, pro active, very reliable and pleasant to work with." The client adds: "I do some cross-border financing with Jersey quite regularly, so I need to instruct Jersey lawyers. I cannot remember how I was first put in touch with the firm, but it speaks for itself that the relationship has lasted a few years."

Peter Byrne and Malcolm Ellis advised RBS in one of Bedell Cristin's standout deals. The firm was acting in connection with a pre-close facility and an investor call bridging facility to two private-equity funds which, combined, were worth €1.6 billion.

Byrne also led on the deal that saw the firm act as Jersey counsel to private-equity house Dunedin on the management buy-out of Rathbone International and the Jersey trust operations of the fund and wealth management providers Rathbone Brothers.

Leading lawyers

Peter Byrne
Richard Gerwat
Emily Haithwaite
Shane Hollywood
Martin Paul

Carey Olsen

Carey Olsen drops down a tier after commentators spoke of a discrepancy between the depth of the firm's practice compared with other tier one firms.

Nonetheless Carey Olsen posted a strong year and clients speak highly of the firm. "The overall service level was excellent, with good industry knowledge balanced with sound commercial principles. We very much value the relationship and the support we receive from them."

Competitors also praise the firm for the strength of its practitioners. In particular they praise Alex Ohlsson – who is described as a "standout" and a "very good name" – as well as head of the banking and regulatory teams Paul Sugden. "If you want a comprehensive overview of the legal issues in banking and regulatory matters, he's your man," says one client of Sugden.

Ohlsson led the team that acted for Deutsche Bank in its €350 million refinancing of Jersey holding company Russian Land. Carey Olsen worked alongside Russian, Cyprus and UK counterparts in the transaction.

Allan Stevens also acted on a notable transaction, providing Jersey regulatory advice to Jersey entities in the Bank of America and

Merrill Lynch groups in relation to their merger.

Leading lawyers

Nicholas Crocker
Alex Ohlsson

Other ranked firms

Appleby moves down after commentators note the firm's decreased visibility in the financial and corporate market. However, the firm still pulls in some impressive transactions and has a significant presence in Jersey.

"We find them to be commercial and responsive, and generally sensible people to deal with," says one client who regularly uses the firm. The same client goes on to say of Mark Lewis. "He understands us and what our clients need, and the work is always done well, and on a timely basis."

Lewis took part in the firm's most high-profile transaction of 2008; private-equity firm Alchemy Partners' management buyout of Noonan Services Group, a contract cleaning and facilities management group. The transaction was worth €90 million and was completed in August 2008.

Ozannes is a small practice and still regarded among competitors as a newcomer to the Jersey market. But the firm has increased its focus on financial and corporate work, and rivals are beginning to sit up and take notice. "They are strong in litigation and have good partners for corporate work," says one competitor. "We have seen Ozannes a lot more on transactions," says another. Clients too report similar findings. "They have improved a lot over the last few years and now cover all areas," says one client.

In one of the firm's leading deals, Marcus Stone, who is widely regarded as the firm's leading practitioner, acted as Jersey counsel for HSBC Private Bank (Guernsey) in two loan agreements with values of €118 million and €1.1 million respectively.

Walkers is another smaller Jersey practice. And while the firm is renowned in the Caymans for pursuing an aggressive strategy, in Jersey it is still viewed as having a low profile.

But not for much longer, according to commentators. "Walkers is developing its practice and trying to push itself on the market," says one competitor. "I have seen a lot of them, though, mostly on the opposition side, and they have always done a very good job. I was very impressed by them and their capital markets practice," says one partner at a London firm.

The downturn has even delivered Walkers some new clients. The firm was not involved in the market when deals, some of which were

completed with firms imposing Chinese walls, ran into trouble, and so were an obvious choice for companies looking for separate counsel.

That's not to say the firm is unfamiliar with Chinese walls – James Gaudin and Michael Johns advised Future Capital Partners and Schroder & Co respectively using the structure, working on a structured-equity transaction that established two Jersey bond issuers and several Jersey protected cell companies. The deal, which was completed in January 2009, was worth €152 million.

Guadin also advised Société Générale's New York branch in connection with the €2.9 billion unwind and liquidation of its US MTN, Euro MTN, US commercial paper, Euro commercial paper and capital note programme in respect of its premier asset collateralised entity (Pace).

Investment funds

Recommended firms	
Tier 1	Mourant du Feu & Jeune
Tier 2	Bedell Cristin Carey Olsen Ogier
Tier 3	Appleby Ozannes Voisin & Co Walkers

"For the last few years it's been boom time in funds," says one partner at a leading Jersey firm. "But the market we have now will establish those who are able to manage a fund through difficulty." No doubt the market conditions will stir things up among the legal profession too.

The trend for fund work in Jersey for the past year is one of sustained periods of restructuring and advisory work followed by short bursts of intense deal activity. "The few funds we are starting up have really tight time frames because they think they are hitting the market at just the right time and they don't want people stealing their ideas," says one partner.

Also, the Madoff case did the practice area few favours, inciting more aggressive due diligence and, for some, casting a negative light on the unregulated funds that came into effect in February 2008 and had been a popular addition to Jersey's regime.

"When unregulated funds came in to the market last year they were a huge success and everybody wanted to get involved, but now

people are afraid of them,” says one partner. “It’s mostly because of Madoff; people now want to feel as though they are part of something regulated. People want total transparency; they want traditional, much more straightforward funds. People are suspicious of anything that looks too clever,” says one partner.

But the panic has not been widespread. Jersey attracts a sophisticated clientele who know what they’re buying into, and the speed to launch that the unregulated regime offers will see it remain an attractive option when the downturn ends and funds work picks up.

And though Jersey’s mature market makes it difficult for up and coming funds practices to make an impact, the downturn has made clients more cost conscious and created an opportunity for change in the legal landscape. “The top tiers sound right for the amount of work they get from the City, but next year the next tier down may be more busy just because of their prices,” says one client.

Mourant du Feu & Jeune

Mourant’s emphasis on its funds practice has paid dividends; it is roundly accepted as the leading firm in Jersey. “Mourant is clearly the market leader,” says one partner. “They have the largest number of dedicated funds lawyers and I have to respect that.”

The firm has traditionally focused on private-equity, real-estate and hedge funds but, while market conditions make such work harder to come by, Mourant has subsisted on the work at hand, such as mezzanine and emerging-market funds.

Mourant group’s fund administration and corporate services firm, Mourant International Finance Administration group, is set to be sold in a management buyout in the summer of 2009, but most commentators expect the sale to have little impact on the practice, which contains more than one of the biggest names in the Jersey funds market.

“They have 50% of the market share and some really good people,” says one rival. “Ed Devenport is really good.” Says one client: “Jacqueline Richomme is an extremely competent lawyer, well connected and one of the leading lawyers in the jurisdiction. Absolutely outstanding.”

And it was Richomme who led on one of the firm’s standout deals of the past year – the establishment and regulation of Nordic Capital Fund VII, a Jersey private-equity fund. The fund invests in large to mid-sized companies in the Nordic and European regions and closed in November 2008 after raising €4.3 billion.

In an equally impressive transaction, Daniel Birtwistle advised on the establishment of CVC Capital Partners’ third Asian

fund. The fund raised €3 billion and was the largest fund ever raised in the Asia Pacific region.

Leading lawyers

Edward Devenport
Simon Gould
Robert Hickling
Jacqueline Richomme

Bedell Cristin

Bedell Cristin’s funds practice has reached a plateau in terms of growth, but the strength of the team was already sufficient to merit a tier two ranking. And while some commentators perceive the firm as having less specialised funds practitioners than its competitors, no-one doubts the firm’s quality.

Clients say they value the firm’s capabilities in alternative investments and private-equity funds in particular. “They’re excellent,” says one client. “We have had a relationship with them for some time. We work with them because they are excellent international and funds lawyers.”

The team is led by Martin Paul, while Simon Pascoe and Emily Haithwaite – who is described by one competitor as “good all round” – are singled out for their funds expertise.

The firm acted for LODH Private Equity, the private-equity arm of a Swiss private bank, in the establishment of Euro Choice IV – a Jersey general partner for a Scottish limited partnership. The fund focuses on mid-size companies in the European market and had raised over €500 million when it closed in June.

Leading lawyers

Richard Gerwat
Emily Haithwaite
Martin Paul

Carey Olsen

“They have been really good,” says one client of Carey Olsen. “They are definitely one of the best legal firms in the Channel Islands.”

Carey Olsen has a strong reputation for funds work in Jersey, particularly on the institutional side. It is a reputation which, over the past years, has seen the firm win instructions from new clients and continue to receive referrals from magic circle firms.

“I have long-standing historical experience of working with them and they have always delivered and been quite creative in their approach,” says one client. “They have the ability to make complex problems into simple solutions.”

Eve Kosofsky is widely regarded among her peers as a leading light for funds work. Clients also praise Daniel O’Connor, a relative newcomer to Carey Olsen. “Eve Kosofsky and Dan O’Connor are both excellent,” says one client. “They have good funds knowledge and good commercial knowledge.”

On one instruction from Travers Smith, Kosofsky, along with O’Connor, acted for Activum in establishing three parallel Jersey limited partnerships as an expert fund, with a target of between €150 million and €200 million. The deal closed in October 2008.

O’Connor was also present on another of the firm’s outstanding transactions, teaming up with Edward Quinn in December 2008 on the issue of €100 million loan notes for GoldenTree European Select Opportunities Fund, an expert fund worth €250 million.

Leading lawyers

Eve Kosofsky

Ogier

“We find Ogier to be an excellent firm,” says one client of Ogier’s funds practice. “They are our preferred Channel Island firm. We work with them very often and find them to be practical and responsive, and overall very good.”

Ogier has a reputation for specialising in real-estate funds, though, with that market severely restricted by the downturn, the firm has concentrated on its other strengths. On top of the now ubiquitous restructuring work, the firm also does a significant amount of work on specialised and alternative funds, and unregulated funds. Ogier is also the leading listing sponsor on the Channel Island Stock Exchange.

Richard Thomas, who is according to one rival one of the “statesmen of the funds industry in Jersey”, is the chairman of the Jersey Funds Association and the firm’s leading light for funds work.

Illustrating the firm’s depth, managing associate Sinéad Meehan has been involved in a variety of leading deals. In October 2008 she advised Arx Equity Partners on the establishment and first closing on its third lower mid-market fund, Arx CEE III, which raised €83 million.

The following month Meehan worked alongside Slaughter and May, advising Development Partners International on the establishment of a Jersey limited partnership under the expert funds regime. The partnership was established as a parallel investment vehicle to a Mauritius private-equity fund investing in African private sector businesses. The deal is valued between €50 million and €100 million.

And Michael Lombardi led the team that acted as Jersey legal adviser for the establishment of ICG's Recovery Fund 2008. The fund consists of three Jersey limited partnerships with a Jersey corporate general partner, and is ICG's first eligible investor unregulated fund. The fund raised €475 million on its first closing in October 2008.

Leading lawyers

Chris Byrne
Nick Kershaw
Michael Lombardi
Richard Thomas

Other ranked firms

Appleby has a young funds practice which, according to rivals, is still waiting to make its mark on the Jersey landscape. But the firm is building its client portfolio, which includes magic circle firms, and both competitors and clients rate highly the services of Mark Lewis, the firm's group head of corporate and commercial in Jersey.

"My experience working with the firm was excellent," says one client. "Mark Lewis was responsive and thoughtful."

In one of the firm's most high-profile transactions of 2008, Mark Lewis and Andrew Weaver acted for Atrium European Real Estate on a restructuring and investment of up to €1.85 billion by a joint venture between Citigroup and global property investor Gazit. Meinel European Land (now Atrium European Real Estate Limited) was the first unclassified fund in Jersey to convert to listed status. The deal closed August 1 2008.

In another prominent deal, Andrew Weaver worked alongside Sarah Bolton to advise asset management business First State International Investments on the Jersey-related aspects of its new fund, which invests in media copyrights. The deal closed in October 2008 and was worth €200 million.

While **Ozannes's** Jersey practice is still relatively small, the firm has a strong funds focus, with one client saying the firm "is at the cutting edge of fund structures".

Ozannes also possesses two partners whom clients regard highly. "I worked with Marcus Stone," says one client, adding: "He was thoroughly competent and gave us good service."

Another client of Stone's agrees: "He is very practical and commercial in providing advice and very good in reciprocity; in terms of forwarding work to and from the Channel Islands there's more of an opportunity for us to refer work to them, but Ozannes has been very active in advising us of areas that might be appropriate for us."

Mark Chambers is the other partner at the firm who has been praised for his funds work. Chambers led the team that established the close-ended investment limited liability company Ignition Investments #2. The fund was one of the first to be structured as a Jersey unregulated exchange traded fund and was completed in November 2008 with a value of between €1 million and €30 million.

Walkers sets itself apart from the majority of funds practices in Jersey by not having an affiliated trust company. The firm is strong in hedge fund work and also has strong links with the British Virgin Islands and Cayman Islands, the latter being viewed as a specialist area for the firm.

Although some commentators speak of tension between the Cayman Islands and Jersey, which compete for clients, Walkers offers a multi-jurisdictional service from within the firm. The team, headed by Jonathan Heaney and Ian Gobin, is praised by clients. Heaney, in particular, comes in for some praise. "Jonathan Heaney is very easy to work with – affable, efficient and he answered his own phone, which is a rare thing for a lawyer and makes life a lot easier."

In March 2009, Heaney advised Capital Investment Management on the launch of the first unregulated eligible investor hedge fund in Jersey. In the same month Heaney also advised Delff Asset Management on the launch of a mezzanine financing fund as an unregulated eligible investor fund.