

# Guernsey

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## Professional body:

The Guernsey Bar  
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## Recent legislative developments

Russell Clark and Ben Morgan  
Carey Olsen

The Bailiwick of Guernsey comprises the islands of Guernsey Alderney and Sark, of which Guernsey is the largest by far, lying in the Gulf of St Malo, 60 miles southwest of England and about 30 miles west of northern France.

Guernsey enjoys full fiscal autonomy in tax and regulatory matters and has its own judicial system. It is a British Crown Dependency but is largely independent from the UK except in issues relating to external affairs.

### Investment funds

Guernsey continues to enjoy extraordinary times in terms of the sheer volume and size of funds coming into the island with a record value of over £140 billion under management and administration, recorded in May 2007 by the Guernsey Financial Services Commission. The growth is largely due to innovative developments in Guernsey's funds legislation by the authorities, ensuring that the island remains wholly competitive as a jurisdiction for funds.

A significant number of new investment vehicles established in Guernsey are listed vehicles. A large proportion of the listed funds have been high-profile, including the launch of KKR's limited partnership as a Euronext-listed vehicle, which recently won the *IFLR's* award for European private-equity deal of the year. Stock market conditions permitting, the growth in listed funds is likely to continue as a trend. A considerable number of the vehicles which have been established in Guernsey have been trend-setting. The herd mentality of the fund industry is such that when a new structure is launched in Guernsey it is replicated by other fund managers. Guernsey's pioneering approach in accommodating new structures and new ideas has undoubtedly benefited the island.

There have been two recent highlights in the establishment of Guernsey funds.

A number of Guernsey funds took the opportunity to list under Chapter 14 of the London listing rules (the so-called European directive minimum route). This opportunity closes at the end of 2007 with the introduction of a single platform for all funds, except those that plan to list on a proposed new Specialist Funds Market, details of which were announced in July. The Financial Services Authority's announcement of this new market is a significant move for the London Stock Exchange, as it looks to fill a perceived gap between the main market for listed funds and the Alternative Investment Market.

The new market will aim to provide flexibility for specialist fund vehicles such as hedge funds and private-equity vehicles. A London listing will be a big plus for investors in terms of raising a fund's profile, but also, ultimately, in providing liquidity. The principal beneficiary of this new market, in terms of the fund's domicile, is likely to be Guernsey, given the current preference to establish offshore London listed funds in Guernsey.

In February 2007 Guernsey introduced a fast-track approval process for all closed-ended funds, creating a new registered fund regime. This has undoubtedly assisted in maintaining Guernsey's position as an attractive jurisdiction for the domicile of funds, the clear advantage being that the new process ensures a fund's launch within 72 hours. Registered funds can be single or multi-class unit trusts, investment companies, protected-cell companies or limited partnerships, whether listed or unlisted. The only investor restriction is that the fund must not be offered directly to the public in Guernsey. Plans are also afoot to introduce a similar registered fund regime for open-ended vehicles in the coming months. The majority of closed-ended funds are now being established as registered funds. Given its success in relation to closed-ended funds, it is extremely likely that the regime will be every bit as successful for open-ended funds.

### Guernsey trust legislation

Recent changes to Guernsey trust law are designed to create a more flexible framework for the local trust industry and to ensure that Guernsey remains competitive as a jurisdiction for the establishment and administration of fiduciary structures, and at the forefront of legislative developments across the globe.

One of the most significant changes is the introduction of non-charitable purpose trusts. Rather than bringing in a completely separate regime for purpose trusts – a route preferred by certain other jurisdictions such as the Cayman Islands and the British Virgin Islands – Guernsey has simply revised the law removing the requirement for there to be beneficiaries to a trust. One of the common uses for a purpose trust is to incorporate and be shareholder of a private trust company (PTC) which in turn acts as trustee to a specific trust (or group of trusts).

The new law also removes the limit on a trust's duration (previously 100 years) allowing the creation of perpetual trusts. Under the revised legislation, assets can be decanted from one trust to another even where the second trust is of a longer duration than the first – finally ending the debate among practitioners as to whether this was allowed under the 1989 law.

The revised law creates a non-possessory lien over trust assets in favour of the retiring trustees and simplifies the ability of a previous trustee to enforce an indemnity given in its favour where it is not a party to the indemnity. This aims to facilitate changes of trustees and to avoid the sometimes complex chain of indemnities in cases where there have been successive changes in trustee. The process can, at times, become laborious. The new regime is intended to make the transfer process more efficient for all concerned.

The 2007 law has been redrafted so that the terms of the trust may expressly exclude discretionary beneficiaries' rights to information, without denying the overriding right of any beneficiary to apply to the court for information. The objective of this change is not to

routinely deny beneficiaries information, but where a settlor is genuinely concerned that certain information should be kept confidential from beneficiaries until, for example, they have demonstrated an ability to provide for themselves, the facility is available.

## Financial and corporate

Recommended firms	
<b>Tier 1</b>	Carey Olsen Ozannes
<b>Tier 2</b>	Collas Day Ogier
<b>Tier 3</b>	Babbé

Without a doubt the biggest event in the Guernsey market this year was the \$5 billion listing of KKR Private Equity Investors' permanent capital vehicle on Euronext in Amsterdam which was awarded the *IFLR* European Equity Deal of the Year award for 2007. The listing brought Guernsey onto the US radar, with one firm remarking that within hours of the deal's completion 20 private equity firms were on the phone wanting to do copycat deals. "The amount of work it generated was enormous," said another Guernsey partner.

Other significant developments this year have included the implementation of the registered closed-end fund and incorporated cell company structures, which allow Guernsey to be more competitive as an offshore jurisdiction.

"There's a great deal of variety and innovation in the corporate and commercial sphere in terms of structure, reliability and combinations of vehicles and jurisdictions," said one partner. "There's no such thing as a standard transaction any more."

### Carey Olsen

"Carey Olsen had a storming year," one rival remarked. "They did the deal that got Guernsey noticed." The firm represented the \$5 billion KKR Private Equity Investors permanent capital vehicle listing on Euronext on the issuer side, cementing its position in the top tier in the process. The fund was established as a Guernsey limited partnership and listed on Euronext – one of a handful of exchanges that allow the listing of limited partnership structures.

Carey Olsen used an identical model when it acted on the \$1.5 billion Apollo Alternative Assets listing on Euronext in August 2006. Graham Hall leads the investment funds team and is praised by rivals for being "very commercial, very practical and having a sound and fundamental understanding of law".

The firm also acted for private-equity firm Permira on three notable deals: the launch of the €11 billion Permira IV fund, the acquisition of the Swiss JET Aviation Group by Permira Europe III and the acquisition of Birds Eye Frozen Foods from Unilever.

The commercial and banking team is headed up by Nigel Carey, who one peer praised as being one of the few lawyers who can cover both Guernsey domestic and international work.

Carey Olsen's commercial highlights include acting for Propinvest and JPMorgan in relation to a series of £100 million property acquisitions and disposals, advising ING on the acquisition of Jersey Property Unit Trusts and issuing various classes of commercial mortgage-backed floating rate notes for Société Générale in a £1.12 billion loan securitization.

### Leading lawyers

Nigel Carey  
Graham Hall

### Ozannes

Ozannes, one of the two largest firms in Guernsey, had another busy year on the corporate and commercial front. Team head Peter Harwood continues to attract praise from all corners. "He's experienced and always delivers – he really stands out," said an opposition partner. One client said Harwood's 20 years of experience was a significant factor in appointing Ozannes.

There were a number of personnel movements at Ozannes this year, with three associates arriving from Australia and New Zealand and two senior associates departing to rival firms. Christopher Anderson left to become a partner at Bedell Cristin's fledgling Guernsey office, while Caroline Chan moved across to Ogier.

Ozannes's headline deal was acting as Barclays Capital's Channel Islands adviser in a £1 billion refinancing transaction in August 2006. This involved repackaging debt facilities to create a bespoke product and was completed in only four weeks. The deal was significant for Ozannes as it was the first time the firm had worked with its Jersey office on a large transaction.

The practice also won a role advising on the £21 million sale of Cheshire Building Society's Guernsey operation to Icelandic

bank Landsbanki, a deal which was led by partner David Moore.

On the funds side, the firm advised on the establishment of a closed-ended fund for Babcock and Brown Public Partners and created three new cells of a structured derivatives platform for Harewood Structured Investment.

### Leading lawyers

Gavin Farrell  
Peter Harwood  
David Moore

### Collas Day

Collas Day had a bumpy year internally, with its litigation team departing in March 2007 and partner John Lewis moving across to Mourant's Jersey office in June 2007.

In spite of the turbulence, peers still see the firm as strong on a range of domestic and international corporate and commercial deals.

Collas Day boasts a strong M&A practice, which recently advised on Barclays's purchase of fiduciary services company the Walbrook Group and guided Alternative Investment Market (Aim)-listed Ekay's purchase of Wallace Barnaby, a Channel Islands advertising agency.

The firm were also active in financing, acting on RGI International's \$180 million Aim listing and subsequent share offering in December 2006.

In addition, Collas Day acted as Guernsey counsel for a consortium of high-profile banks in relation to an SKr865 million (€93.5 million) banking facility for the Capiro Healthcare Group.

Other highlights for the year included Fortis Bank's £49 million purchase of CI Traders' Guernsey offices and completing the first listing and registration of a Guernsey incorporated cell company.

A client described the firm as "very flexible in terms of scheduling and delivery time scales", adding: "When there are issues with clients, they are good at helping work through the problems."

The "very practical and commercial" Ian Kirk is singled out for praise from rival firms and clients alike, while Sean Chong was described by one client as "exceptional at keeping a complicated project on plan".

### Leading lawyers

Sean Chong  
Ian Kirk

**Ogier**

Ogier is “dynamic and up-and-coming with a great international focus”, according to a rival partner. “They’re knocking on the door of tier one.”

The firm has grown again this year, appointing seven associates including senior associate Caroline Chan from Ozannes’ Guernsey office. The firm has moved to new premises to accommodate its expected growth.

Partner Marcus Leese is described by a rival firm as “a complete workaholic who keeps clients happy”, while a client describes partner Roger Le Tissier as having a “good practical approach”.

Ogier had a very busy year on the corporate front. One highlight was winning a role as Guernsey legal advisor for the vendor in BNP Paribas’s £30 billion acquisition of RBS International Securities. Another deal saw the firm act as Guernsey advisor to Citigroup on its purchase of Quilter Holdings, the British wealth management arm of Morgan Stanley.

The firm advised Macquarie Bank on the formation of a Guernsey-based joint venture vehicle in its £8 billion purchase of Thames Water, and provided guidance on a £450 million refinancing of the bank facilities of two cells within Dominion Funding Limited.

On the financial side, one highlight saw Ogier provide Guernsey advice on Tetragon Financial Group’s \$1 billion listing on the Euronext exchange in the Netherlands.

Ogier also acted as the Guernsey adviser during the formation of a number of closed-ended funds, including the Collier International Partners V Fund, EQT V Fund and Cazenove Absolute Equity.

Other noteworthy transactions saw Ogier provide guidance on the establishment of cells within AHL Strategies and advise on a \$440 million share issue by Dexion Capital.

**Leading lawyers**

Roger Le Tissier  
Marcus Leese  
William Simpson

**Babbé**

Formerly known as Babbé Le Pelley Tostevin, the firm has hired former banking and asset finance group partner Stuart Tyler from London firm Stephenson Harwood but the shadow of Mark Helyar’s departure still hangs over the firm.

Noted by a peer for its abilities in international domestic financial work, Babbé represented the purchasers in the £63 million sale of Trafalgar Court, Guernsey’s largest-ever property sale.

**Leading lawyers**

Geoff Allez  
Simon Howitt  
Andrew Laws

**Other notable firms**

**Mourant** opened its Guernsey office in January 2006 and has made an impressive entrance to the market. Headed by Darren Bacon, the firm hired John Lewis from Collas Day in June 2007 and focuses on the funds and finance business.

Among Mourant’s highlights, the firm acted on the formation of Volta Finance’s closed-ended fund and its subsequent listing on Euronext, provided Guernsey guidance for private-equity group Doughty Hanson and Carlyle’s launch of a range of permanent capital vehicles, and provided cross-jurisdictional advice to the Royal Bank of Scotland on the £572 million Epic (Barchester) commercial mortgage-backed security issue.

Other significant clients include Abbey National, HSH Nordbank, Allied Irish Bank, Eurohypo and Citibank.

**Bedell Cristin** is also a new entrant to the market, opening its doors in April 2007 with ex-Babbé partner Mark Helyar.

Helyar was followed in May 2007 by Ozannes senior associate Christopher Anderson, who promoted to partnership. Peers predict the firm will accelerate up the rankings within the next few years if it can continue to attract talent.

On the deal front, Bedell’s highlight for the year was working on the first conversion of a mutual fund from a protected to an incorporated cell company for a subsidiary of First Rand.

“They have the backup of a strong practice in Jersey, so watch this space,” said one lawyer.