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Recent legislative and regulatory developments in the corporate finance sector

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Introduction

A number of regulatory and legislative developments have either come into force or are on the horizon in Guernsey, which have particular effect on the finance industry.

Improvements to the Companies (Guernsey) Law, 2008

On April 1 2010 the States of Guernsey released a consultation paper for Industry feedback on over 80 proposed amendments to the Companies (Guernsey) Law, 2008. Although this legislation is just over two years old, the amendments are being made to ensure that Guernsey retains its edge in the highly competitive offshore market.

While a large number of amendments are proposed, given the size of the Law (588 pages, the Island's largest piece of legislation) and the fact that it consolidated, updated and upgraded decades of piecemeal drafting, the number of proposals should not be seen as representing dramatic change. It is also true to say that the majority of the amendments proposed deal with smaller peripheral changes, with only a small minority dealing with issues that could be considered substantial. Such proposed changes include:

(i) allowing a company to exempt itself from audit indefinitely;

(ii) streamlining migration and amalgamation procedures;

(iii) simplifying the dividend/distribution regime; and

(iv) improving the certification procedure for the solvency test (used for distributions and dividends).

Industry is currently providing feedback and full details of the proposed amendments will be available once the consultation period has ended.

Licensees (Conduct of Business) rules, 2009

The Licensees (Conduct of Business) rules, 2009 (COB rules) came into force on January 1 2010. Licence holders (i.e. those entities licensed to provide investment services) face a number of challenges in order to comply with the rules. In a first step towards compliance, licence holders must classify all of their clients as either: retail clients, professional clients or eligible counterparties.

Once classified, licensees must ensure that they treat the client appropriately under the COB rules, with variations in requirements for the differing classifications. Affected parties would be well advised to take advice on the rules, as they offer further details regarding classification and its effects.

The Licensees (Capital Adequacy) rules 2010

The Guernsey Financial Services Commission (GFSC) has recently introduced the new Capital Adequacy (CA) rules 2010, which have been in effect since April 16 2010 but contain transitional provisions that will allow licensees until June 30 2010 to meet the requirements of the CA rules.

The CA rules are mandatory for all entities licensed under the Protection of Investors (Bailiwick of Guernsey) Law 1987, as amended, and provide a framework upon which it is expected that further, more sector-specific requirements may be based.

The CA rules are broad, but highlights include stopping intra-group loans from being able to be considered an asset of an entity for the purposes of meeting capital adequacy requirements, the removal of fees payable from the financial resources requirements calculation and the exclusion of outstanding trades settled for 15 days or less from counterparty risk computations.

Corporate governance code

A draft code of corporate governance (the Code) was released for consultation in Guernsey this year. The Code (which would apply to the boards of all entities licensed by the GFSC) is split into three levels - outcomes (level one), best practice provisions (level two) and guidance (level three). Outcomes must be achieved, best practice provisions are the suggested means to achieve the outcomes and guidance relates to how to comply with levels one and two.

The consultation on the Code received a massive amount of industry feedback. It seems likely that the final form of the Code will be substantially different from that first proposed, as all aspects of the financial services industry work together in search of best practice.

Conclusion

How the finance industry conducts itself and issues of corporate governance have, for obvious reasons, been under close scrutiny on an international level this past year and beyond. As a result, Guernsey has been quick to demonstrate its resolve to continue to improve its regulatory and legislative framework in order to remain an attractive destination for both foreign and domestic investment. The latest changes to the Companies Law and the regulations governing Guernsey's licensed entities and institutions will surely further Guernsey's reputation as a premiere international finance centre.

Financial and corporate

Recommended firms
Tier 1
Carey Olsen
Mourant Ozannes
Tier 2
Ogier
Tier 3
Collas Day
Tier 4
Babbé
Bedell Cristin

The biggest change in the last few years in Guernsey has been the new companies law introduced in 2008. After some initial issues there is now a consensus in the market that the legislation is a positive development: "I think the law has been a good thing, it's given certain flexibility," says one partner. "You can now incorporate companies very quickly."

A consultation document of potential amendments was put out for discussion and comment at the end of 2009 and changes are likely to be implemented by the end of 2010. However there is unlikely to be any large alterations, as one partner says: "There's certainly nothing like scale [of change] when the law was introduced."

Banking work on the island has started to recover and although there is still plenty of restructuring work to be done, and new lending is coming back. "New lending started to come back in October but things have started to speed up in the last 2-3 months," says one banking lawyer. "Certainly if you roll back to January, February last year the market was quite thin, this year the number of banking transactions is increasing."

Another positive development for the island was the strategic review of Guernsey's banking sector by Lord Hunt whose conclusions were very positive in regard to the island's banks and highlighted the potential for international expansion. "It's very positive, it was thought that he would be critical of administrated banks," says one partner. "If operations are looking for a bank, people can point to the report and say 'hey we have got a report from a UK peer saying this is a location for international banking'."

Carey Olsen

In the financial and corporate area there was little doubt from the market that Carey Olsen and Mourant Ozannes are one step above competitors. "If you look at those two firms together they are the pre-eminent ones in the market and its difficult to see a rational reason to go outside of those two," says one client.

Clients were particularly taken with Andrew Boyce. "He's very approachable, generally pretty commercial in his approach," says one. "The main thing we want in terms of legal advice is a clear strategy on the way forward and Andrew will give you a quick and clear route through a particular issue."

One of the firm's largest deals last year saw the head of the corporate and finance group Graham Hall advise private-equity fund Global Infrastructure Partners on the Guernsey aspects of its purchase of Gatwick airport. Hall was again involved as the team acted for Indian Energy on its latest fund raising and admission to Aim. This is part of the company's planned expansion in the wind farm sector.

The M&A sector also proved to be a good hunting ground for the firm and another notable deal saw partner Tom Carey act for Resolution on the Guernsey aspects of its acquisition of the Friends Provident Group, the holding company of the life and pensions company.

Another highlight that showed the firm's diversity saw partner Fiona Fleming and John Greenfield advising Meespierson on the separation of its trust and banking businesses and the subsequent establishment of Meespierson. The firm also had to define the elements of the relationship between the entities going forward.

Leading lawyers

Graham Hall

Mourant Ozannes

There was a clear feeling in the market that newly merged Mourant Ozannes would be a positive move for both sides, particularly for Mourant. Although the team's reputation had been growing in Guernsey, its traditional strength lies across the water in Jersey, whereas Ozannes have deep roots on Guernsey.

The standing of the former Ozannes team on Guernsey is undisputed and rivals are waiting to see whether the merger will change the dynamic in the legal market or just increase the new firm's capacity. "It will add bodies on seats," says one competitor, "the only area of uncertainty I have is the strengths of the Mourant group, so it will interesting to see whether it will bring much change."

Clients, who have more of a relationship with individual partners, had no concerns about the merger and were keen to stress the quality of individuals. Former Ozannes partner Paul Christopher came in for specific praise: "When we have a difficult situation we tend to use Paul," says one client. "He's a very capable lawyer. What we need in situations at times is a guy with a certain degree of imagination and he's got that, he's very responsive."

One of the biggest deals worked on by the former Ozannes team last year was the €8.8 billion acquisition of Dresdner bank by Commerzbank. The team advised on both Guernsey and Jersey aspects of the deal. Leading the team in Guernsey was Andrew Walters and he also took on work for Rutley European Property in relation to the acquisition of its issued capital by Black Sea Global Properties. Walters was again involved as the team acted for Mitsubishi UFJ Financial Group over its acquisition of shares in Morgan Stanley.

On the capital markets side the team acted for Raven Russia over the £100 million preference share issue on the Aim.

In the former Mourant team Darren Bacon was one of the most active partners last year and one highlight saw him involved as the firm advised the Bank of England over Guernsey advise relating to the refinancing of Northern Rock.

Leading lawyers

Gavin Farrell_

Ogier

Ogier's strength is still seen as being more on the funds side where the market suggests it can compete at the top table. In financial and corporate work, the team is well respected but is seen as one step below the market leaders.

In the busy restructuring market the team acted for the Four Seasons Health Care Group on its £1.5 billion restructuring that included the establishment of a Guernsey company. The deal was the largest UK restructuring in 2009.

In M&A, a team led by Marcus Leese acted for Newtel Guernsey on its acquisition by Wave Telecom. The acquisition included Newtel Data Services and GuernseyNet.

Managing partner William Simpson was active in the capital markets area, acting as the sponsor to Plant Health Care on its listing of shares on the Channel Islands Stock Exchange. Fellow partner Nick Gamble meanwhile acted for Sherborne Investors Guernsey on the establishment of a special purpose acquisition company (Spac) listed on Aim. The team also established the company into which the company invests.

Leading lawyers

Marcus Leese
Roger Le Tissier
William Simpson

Other ranked firms

One of **Collas Day's** biggest deals last year saw Jason Romer advising PricewaterhouseCoopers in the winding down of a £600 million multi-jurisdictional corporate structure. The team had to advise on the subsequent movement of funds through the corporate structure.

Romer was again involved as the firm acted on the refinancing of a £3 billion facility and notes issuance programme for the portfolio of a key corporate.

Partner Chris Bound impressed clients: "Chris Bound is excellent, he's able to understand a problem quickly and his fees are quite competitive," says one.

Both Bound and Jason Romer advised on all aspects, including the corporate and project financing sides of the development of a waste-to-energy plant for Sita Guernsey.

In M&A the team acted for the Heritage Group on the acquisition of Health Lambert group's insurance business, and advised Royal Bank of Scotland on the financing of the deal.
Leading lawyers: Sean Cheong and Ian Kirk

Bedell Cristin's M&A team last year advised RHJ International on the purchase of Klienwort Benson bank and its subsidiaries. Another notable deal saw Kate Ovenden act for Wave Telecom on its acquisition of Newtel Solutions in June 2009.

In a sign of the times, the team also acted for the liquidators of the Carlyle Capital Corporation, one of Guernsey's largest RMBS funds with a balance sheet of $21.7 billion. Both Mark Helya and Kate James worked on the deal.

Investment funds

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Tier 1
Carey Olsen
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One trend that Guernsey practitioners are eager to see more of is the transfer of investment funds from the less regulated jurisdictions of the Cayman Islands and the British Virgin Islands (BVI). "If you talk to people in Cayman or New York they say absolutely not, funds are not moving away," says one partner. "But we have seen some move away and towards the Channel Island jurisdictions."

At the moment though this is more of a trickle than a flood. "We certainly have seen increased interest from promoters coming from Cayman and BVI and new promoters who had previously gone to the Caribbean," says one funds partner. "There's more appetite for regulation but I would not want to overstate that as a trend."

As in many funds-based jurisdictions, Guernsey firms have also been paying close attention to the discussions around the Alternative Investment Fund Manager Directive (AIFMD). Proposed by the European Commission, this is an attempt to create a complementary regulatory framework to cover AIFMs in the EU. "We'd like business as usual, but it looks like we'll have to prove that we are sufficiently regulated." says one partner.

There is optimism though that when the final decision is made it won't adversely affect the market. "We have got great confidence that Guernsey meets the criteria. We don't see it as a threat," says one funds lawyer, and another agrees: "We're all going along with London. I don't think it will make much difference, if it screws us up, it will screw London up and I don't think that will happen."

Carey Olsen

"They are the pre-eminent team in Guernsey, the standard of service is pretty good," was one client's opinion of the funds work at Carey Olsen, and most rivals agree that the firm is one of the clear market leaders: "If you look at market share, Carey and Ozannes are just dominant," says one rival funds lawyer. "I found the guys at Careys more responsive and more commercial."

Last year partner Andrew Boyce advised VTB Capital and DB Real Estate Partners I on a joint venture between VTB and Deutsche Bank to manage a closed-end fund to invest in Russian real-estate. As well as establishing the fund itself, the team also advised on the set up of two management vehicles for the fund.

In the private-equity area Ben Morgan advised AnaCap Financial Partners II on the establishment of a €575 million fund for investment in mid-sized financial services companies. The capital raised from the fund allowed for investment in a UK deposit bank.

Another highlight saw Tom Carey advise Jon Moulton on the flotation of Better Capital, a fund to invest in distressed companies. In February 2010 Carey was again involved as the firm advised Ashmore Investment Management on the launch of a fund to invest in Chinese equity markets.

Leading lawyers
Graham Hall

Mourant Ozannes

As on the financial and corporate side, there was a feeling in the market that the main advantage the new Mourant Ozannes funds practice would have is in terms of manpower. "I don't know that it will really change the market that much," says one rival, "but they do have strength in depth."

Another advantage for the new entity would be the ability to offer a strong cross-island funds offering to clients. "Its very convenient to have the same firm working in both jurisdictions [Jersey and Guernsey], there is a lot of referral work," says one rival. "It allows you to look at a client's case and see which jurisdiction suits them better because the regulatory administrator in both jurisdictions is quite different."

Another notable change at the firm saw partner Peter Harwood retire at the end of 2009. He stays on in the role of consultant.

Last year former Ozannes partner Andrew Walters was kept busy on a number of notable transactions, but clients noted that despite his workload his availability was excellent. "You can ask a question at about ten at night and he'll get back to you," says one. "His general demeanour is great, his knowledge, I can't think of anything I'd change."

Clients noted that this was a trait found throughout the firm. "They are very proactive which is very refreshing," says one. "They are always available I know they are immensely busy but they always make time."

Walters advised International Public Partnerships on a firm placing, offer for subscription and open offer through which the company raised £90 million. He also advised BlueCrest AllBlue over the raising of £102 million through the issues of convertible shares.

On the restructuring side the team advised F&C Commercial Property on its restructuring through the establishment of a new registered closed end fund.

In a possible signs of things to come the team also acted for Clarion Delta Fund over its migration from Cayman and its conversion to a protected cell company.

In the former Mourant team, lead partner Darren Bacon advised Veronis Suhler Stevenson over the establishment of a €600 million private equity fund VSS European Communications Partners for investing in mid-market media companies. Bacon also advised the European Bank of Reconstruction and Development over the financing to Raven Russia, an Aim-listed property fund.

Leading lawyers
Gavin Farrell
Andrew Walters

Ogier

"Ogier is a very good firm, they are more combative," is one client's description of the funds team. "Some firms have a certain arrogance but that's completely lacking at Ogier."

In October 2009 the firm helped set up Burford Capital a closed end investment scheme that raised $130 million through the issue of shares in an IPO on the Aim. Another highlight saw the firm acting for KKR over the merger between KKR and KKR Private Equity Investors. As a result KPE (the new merged entity) received interest representing 30%.

Another key client of the firm is hedgefund group FRM and last year Marcus Leese and Andrew Munro advised the group on a number of issues including the launch of the FRM principia funds range.

Other new fund matters included acting for Baker Steel Capital Managers over a new fund, Baker Steel Resources Trust, to invest into natural resources.

The firm also acted on the reorganisation of the EEA Life Settlements Fund, an open-ended protected cell company, and acted as sponsor to its listings on the Channel Islands Stock Exchange.

Leading lawyers
Nick Gamble
Roger Le Tissier
William Simpson

Collas Day

Clients of Collas Day's investment funds team were most impressed by the versatility of the firm's offering. "Very responsive; they have a broad spectrum of knowledge," a client says, "we run quite a diverse range of fund structures and they can handle it."

A rising star highlighted by clients is senior associate Paul Wilkes: "Very calm approach and that's a very reassuring quality." says one. Wilkes worked alongside lead partner Jason Romer last year acting for GoldenPeaks Capital Management to establish a closed-ended registered fund with two initial cells: a UK value opportunity fund and a German Real estate opportunity.

Both lawyers also worked on MVP Asset Management in the establishment of MVP Fund Range PCC; an open-ended collective investment scheme with three cells in three separate currencies.

Another highlight saw Sean Cheong acting for Bayit Investments as the promoter and investment manager of Bayit Residential Investments a closed-ended collective investment scheme and qualifying investor fund valued at £20 million. The team also worked for Innovatis on the establishment of its collective investment scheme. The fund has two cells, the Innovatis strategy fund and the OFX strategy fund.

Other ranked firms

Christopher Anderson played a significant role on all **Bedell Cristin's** key transactions last year. One of the team's most important deals saw it advise Apax on the establishment of side car vehicles in the Apax Europe VII fund and the admission of the Chinese Investment Corporation as an Investor into both Apax and the VII fund.

One of the most intriguing deals the firm was involved in was the establishment of a £30 million close-end fund for investment in so-called emotional assets such as art and other collectibles.

The team also worked on the establishment of the Gilde IV fund and the set up of a focussed property investment company for property development promoter Eidos.

Leading lawyers: Christopher Anderson