

Guernsey

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Recent legislative developments in Guernsey

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The Bailiwick of Guernsey comprises three islands: Guernsey, Alderney and Sark, each of which has its own legislative assembly and judicial system. Guernsey itself, by far the largest of these islands, lies approximately 80 miles from the coast of England and 30 miles from the coast of France. It is a dependency of the English crown, but is largely independent of the United Kingdom except in relation to external affairs.

Investment funds

Far and away the greatest corporate finance activity undertaken in Guernsey is in the field of investment funds. As at the quarter ended March 31 2006 there were 601 funds established in Guernsey, with a combined value of more than £87 billion.

Investment funds in Guernsey are categorized as open-ended or closed-ended. The distinction is that the securities issued by open-ended funds are redeemable, whereas those issued by closed-ended funds are either not redeemable or are subject to restrictions on redemption. Of the 362 closed-ended funds established in Guernsey as at March 31 2006, 121 were listed on one or more stock exchanges.

Open-ended funds are constituted as companies or unit trusts and closed-ended schemes are constituted as companies, unit trusts or limited partnerships. A fund incorporated as a company can be a protected cell company. Such a company is able to create one or more cells, the assets and liabilities of which are separate from those of other cells. This facility is particularly useful when setting up umbrella or multi-class investment funds, as it facilitates the creation of sub-funds in such a way that the liabilities of one sub-fund cannot cross-contaminate the assets of another sub-fund. In addition, legislation was passed early in 2006 permitting the establishment of incorporated cell companies. These are similar to protected cell companies, the principal difference being that the cells of an incorporated cell company each have their own separate legal personality, whereas the cells of a protected cell company do not.

Regulation of investment funds

Different regulatory regimes apply to open-ended and closed-ended funds. Both regimes are administered by the Guernsey Financial Services Commission (the Commission). Open-ended funds require authorization under the provisions of the Protection of Investors Law

1987, as amended (the POI Law) and different rules (and levels of regulation) apply to such funds depending the intended market for the securities. For example, restrictive rules (and a high level of regulation) apply to Class A funds (which can be sold to the public in the United Kingdom and certain other jurisdictions), whereas the rules relating to funds aimed at qualified investors are far more flexible. In April 2006 the Commission widened its definition of "qualified investor" to include an individual investor who invests a minimum of \$100,000 in a fund.

Issues of securities by closed-ended funds require consent under the Control of Borrowing (Bailiwick of Guernsey) Ordinance 1959, as amended (known as the Cobo). Providers of certain services (such as managers, custodians and registrars) to investment funds (whether open- or closed-ended) need to be licensed under the POI Law.

The Commission operates a policy of selectivity in relation to the setting up of investment funds in Guernsey. A prospective promoter will normally need to show an established (and favourable) record of promotion of investment funds.

Other corporate finance activity

Whilst many private companies are incorporated in Guernsey, for a multitude of reasons, Guernsey companies (other than investment funds) are used fairly rarely to raise money by the issue of securities to the public. However, an increasing number of Guernsey companies are being used as vehicles to issue debt securities – particularly asset-backed securities, where income earning assets are securitized by transferring them to a free-standing company which then issues securities, the payment of which is backed by the transferred assets. Issues of such securities require the consent of the Commission under the Cobo. Companies incorporated to issue such securities can be set up as protected cell or integrated cell companies, enabling a number of issues of securities (via separate cells) to be effected without the assets which secure the payment of one class of securities being available to the holders of another class of securities.

Recent developments

Until relatively recently it was difficult to set up hedge funds in Guernsey, particularly because of the requirements of the applicable rules in relation to the appointment of a Guernsey licensed and domiciled custodian and the calculation of net asset values. The Commission has announced a more flexible approach to its authorization policy, particularly for funds targeted at institutions and expert investors. This increased flexibility is achieved by the Commission granting waivers, where appropriate, of the existing rules, rather than by the promulgation of new rules which are specif-

ically applicable to hedge funds. In particular, in the context of the requirements for custody of investments, the Commission will not, in appropriate circumstances, insist that a fund appoints a Guernsey domiciled and licensed custodian, but will be prepared to designate a suitably qualified prime broker to be the fund's custodian. The Commission will also grant waivers for funds that can demonstrate a need to use net asset value estimation processes in advance of final determination of the net asset value and, where such estimation is allowed, will grant waivers of the rules requiring segregation of subscription and redemption monies.

A report of a committee appointed to review investment sector legislation and regulation was released in June 2006. It recommends some fundamental changes to regulatory laws. The key recommendation is to create a registered funds sector, alongside the existing regulated sector. Unlike regulated funds, registered funds would not need to be approved in advance by the Commission. The report suggests that the same framework should apply to both open- and closed-ended funds, which should be subject to a dedicated funds law, leaving the existing POI Law to deal with other aspects of investment business. In addition, it recommends that public offers should be made subject to specific legislation dealing with issues of prospectuses, rather than to the current Cobo regime.

Corporate and commercial

Recommended firms

Tier 1

Carey Olsen
Ozannes

Tier 2

Collas Day
Ogier

Tier 3

Babbe Le Pelley Tostevin

Carey Olsen

Carey Olsen's corporate and commercial team is led by the "extremely well respected" Nigel Carey and Graham Hall. The continued increase in mandates has prompted the firm to embark on something of a recruitment drive in 2005, which added considerable experience to the already strong team. Andrew Boyce became a partner in the London office and is boosting already good relationships with City clients, and new associates Tom Carey, Leonie Counihan and Alex Manger joined the firm from Norton Rose, CMS Cameron McKenna and Credit Suisse (Guernsey) respectively. The market did note the firm lost Darren Bacon, however, who moved over to Mourant du Feu & Jeune in January 2006.

Carey Olsen has "great depth in corporate and commercial work", according to one peer, and boasts the largest dedicated funds team in Guernsey, which has had a busy 12 months. Among the year's highlights, the team acted for Cambridge Place Investment Management in the establishment and listing on the London Stock Exchange of a \$250 million dollar fund, and advised Renewable Energy Generation on the formation and launch of a £250 million closed-ended Alternative Investment

Market (Aim)-listed fund established to provide finance to encourage energy production from renewable sources

The firm's links with a raft of top-flight City law firms provides a fruitful source of work too. For example, over the past year it worked alongside Norton Rose twice: first, in advising ING on the formation, launch and listing on the London and Channel Islands stock exchanges of a £252 million closed ended property fund which acquired the interests in the unit trust vehicle which was used by ING to purchase the Abbey property portfolio, and secondly, in connection with the establishment of a £125 million closed-ended property company listed on the London Stock Exchange for Alpha Pyrenees Trust. Other investment fund clients include Dresdner Kleinwort Wasserstein, Saltus Partners and Audley Capital Advisers.

Carey Olsen's credentials mean that it is often at the forefront of new developments in the market, and 2005 was no exception. In 2005 the introduction of the Qualifying Investor Funds (QIF) regime enabled approval of a QIF-approved fund in three working days by the Guernsey Financial Services Commission. Carey Olsen was the first Guernsey firm to establish a fund under the new QIF regime.

Leading lawyers

Nigel Carey
Graham Hall
Ben Morgan

Key contact partners

Nigel Carey
Graham Hall
Ben Morgan

Ozannes

Ozannes' corporate team at Ozannes is "very well regarded" by peers and clients, and has been strengthened in 2005 with the appointment of new associate Helen Crossley, who joined the firm from Eversheds. The firm works for a broad range of clients, including numerous financial services institutions and blue-chip companies, and attracts considerable referral work from law firms. From the team, "main man" Peter Harwood is the name most frequently mentioned; "he is definitely one of Guernsey's leading lawyers", say peers.

Over the past year Harwood led teams that acted as Guernsey legal advisor in connection with the acquisition of Somerfield by a consortium including Apex Partners Worldwide, Barclays Capital and the Tchenguiz Family Trust, and advised in connection with the global restructuring of Le Meridien, a deal that involved Starwood Hotels and Resorts' acquisition of the Le Meridien brand and management business and the joint venture purchase of 40 Le Meridien hotels by Lehman Brothers and the Starwood Capital Group.

Other corporate mandates saw Ozannes act for Pernod Ricard on its £7.5 billion purchase of Allied Domecq, and advise on the acquisition of Abacus's Guernsey business interests relating to the acquisition by Royal Bank of Canada of Abacus's offshore financial services businesses.

The firm also boasts a solid investment funds practice, which over the past year acted as Guernsey legal advisor on the establishment of the Hermes Commodities Investment Fund (an open-ended umbrella fund listed on the Channel Islands Stock Exchange) advised on a £150 million Aim- and CISX-listed closed-ended property fund for Raven Mount set up to invest in real estate in Russia, and assisted with the establishment of Morant Wright Japan Income Trust, a closed-ended investment company investing in Japanese securities.

Other banking and finance work saw the firm act for HSBC (in its capacity as working capital provider, account bank and hedging provider) on a securitization for Scottish Widows Investment Partnership, and advise on Peter Hambro Mining Group Finance's issue of \$140 million guaranteed convertible bonds in September 2005.

Leading lawyers

Peter Harwood
David Moore

Key contact partner

Peter Harwood

Collas Day

Collas Day specializes in insurance, M&A and funds work, but places particular importance on its banking practice. Royal Bank of Scotland remains a major client, and over the past year the firm has advised the bank on a raft of notable deals. Among these were the establishment of syndicated and bilateral loan facilities made available to the Glanmore Property Fund valued at £465 million, the provision of facilities for the acquisition of ComProp for £130 million, and the £34.5 million development financing, hedge and letters of credit facilities made available to fund the development of an office and retail site.

The firm was also involved in a number of M&A deals over the last year, acting for the shareholders of local brewing company RW Randall during the acquisition of the company by The Guernsey Pub Company, and advising Punch Taverns on the Guernsey aspects of an all-cash acquisition of the Spirit Group for £2.7 billion, which created the UK's largest group of pubs and bars.

Collas Day also continued to make successful progress in investment funds work, acting as legal advisor to open-ended property fund Greenfield International on its admission to listing on the Channel Islands Stock Exchange, and advising on the establishment of the Stafford European Fund, an open-ended fund of funds denominated in euros and structured as a Guernsey unit trust.

Partner Ian Kirk is "very well-regarded" by his peers, who refer to his "affability" as a defining personal trait. Meanwhile, managing partner Chris Bound also attracted plaudits, being described by one peer as a "very experienced" and respected personality in the firm "with wide experience across the spectrum of commercial transactions".

Leading lawyers

Sean Cheong
Ian Kirk

Key contact partners

Chris Bound
Sean Cheong
Ian Kirk

Ogier

Leading lawyer William Simpson heads up Ogier's Guernsey office with Roger Le Tissier, and according to one rival lawyer, "they make a very strong investments fund team". In the last year the firm has added to its personnel with associates, Alan Luu and Andrew Lowe joining from Australia, Sandeep Chokshy from Dubai and Elaine Gray from Cayman.

The firm acted on a wide range of banking transactions over the last year, including acting for the lenders in Project Dreamliner, an acquisition finance facility made by way of syndicated senior and mezzanine facility agreements for a total amount of 660 million Channel Islands Funds (CHF). The firm also acted for the lenders on a number of Guernsey Property Unit

Trust Transactions which included a facility agreement relating to refinancing existing facility and linking to issuance of units with a value of £23 million. In terms of investment funds, the firm worked on the EQT Opportunity Fund, a close-ended fund aimed at making venture capital investments in Western Europe valued at €750 million and the Emerging Europe Convergence Fund II, a fund valued at €650 million for private equity investments in emerging European countries. Other clients include Northern Trust, Polygon, Dominion Group, Dexion Capital Limited and Man Group PLC.

Leading lawyer

William Simpson

Key contact partners

Roger Le Tissier
William Simpson

Babbe Le Pelley Tostevin

The general opinion in the market is that Babbe Le Pelley Tostevin has slipped somewhat following the loss of "main man" Mark Helyar to Bedell Cristin's Guernsey office. The firm is looking to sort out this situation within the next few months and could reclaim their former placing next year. Significant clients include, HSBC, Saffery Champness, Credit Suisse, Close Trustee Services and Heritage Group. On the deal front last year, the firm advised in a Public/Private Purchase (PPP) of the International Energy Group valued at £200 million.

Key contact partners

Geoff Allez
Simon Howitt
Andrew Laws