

Jersey

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Forthcoming legislative changes

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Jersey is going through a period of transition. A ministerial form of government replaced the previous committee system at the end of 2005, with a view to making the delivery of public services more efficient. The power and authority is certainly now in fewer hands, and time will tell whether there is sufficient accountability to ensure delivery at a sufficiently high standard.

Jersey has unveiled the first proposals in respect of the Goods and Services Tax, due to be introduced in 2008 as part of the means of replacing the lost revenue brought about by the introduction of zero-rated corporate tax. While much of the detail of the tax has yet to be finalised, it is intended that there will be a flat rate of 3% and very few exceptions to the goods and services to which it will apply, although financial services (including interest payments) will generally be exempt. This is Jersey's first ever indirect taxation, and the ambitious objective is for a tax which is non-inflationary, cheap to collect, fair in its application, and does not reduce any competitive advantage the Island may have. The proposals for the introduction of the Zero-Ten tax regime are presently at the consultation stage and are due to be debated in August 2006, with a view to being introduced in January 2009.

Amendment No 8 of the Companies (Jersey) Law 1991 came into effect on February 1 2006. Its principal commercial effect was to introduce the ability to create Jersey cell companies, and thereby offer a similar product to that which has been available for some time in other jurisdictions (notably Guernsey, the Isle of Man and Ireland) while at the same time seeking to learn from their experiences to refine the product. As a consequence, two types of cell company are permitted – the incorporated cell company (ICC) and the protected cell company (PCC).

Whereas a PCC is a single legal entity which attributes its assets and liabilities to individual cells within that single legal entity, the cells of an ICC are each individual companies. The rights of the members of such cells are restricted, in that the cells cannot act independently of the ICC that created them. Each cell will be able to hold assets in its own name and liabilities can be segregated among the various cells thereby introducing the concept of "ring fencing". Cell companies cannot be used as trading vehicles, but are anticipated to be utilised in collective investment fund and insurance transactions, together with other specialist areas where inter-related special purpose vehicles might otherwise be established.

A briefing paper in relation to the proposed Amendment No 9 of

the Companies Law has been released. It proposes the introduction of corporate directors (provided the corporate director is wholly beneficially owned by a Jersey registered trust company), and also proposes the establishment of a publicly accessible register of directors of all Jersey companies. A further proposal is the removal of the financial assistance provisions, which will obviate the present requirement for whitewash procedures.

On the trusts side, the Trusts (Amendment No 4) (Jersey) Law 2006 is shortly to come into effect. The amendment seeks on the one hand to make Jersey trusts a more attractive product for settlors – by the removal of the rule against perpetuities, the ability of the Settlor to reserve beneficial interest or specific powers – and on the other to make Jersey trusts more robust – confirming that only Jersey law applies to questions relating to the validity of the trust (including the capacity of the settlor) and that foreign law will not be taken into account even if the foreign law prohibits trusts or the trust seeks to avoid rights conferred by the foreign law.

The Jersey Financial Services Commission (the Commission) has unveiled its proposals for reforming the regulation of funds and functionaries, by separating the regulation of funds from the regulation of functionaries. At present a functionary has to obtain a permit under the Collective Investment Fund Law for each fund for which it carries out a function. It is intended that the functionary will in future be able to be licensed under the Financial Services Law to carry out funds services business in given categories (similar to trust companies and trust company business). Each Jersey fund will be regulated under the Collective Investment Fund Law, with unclassified funds being issued with a certificate. The intention of these reforms is to simplify the administration process and speed up the authorisation process, reducing the burden on the Commission resources as the funds business grows and at the same time to assist the industry by being able to market as being authorised to conduct specific types of funds business. The proposals are consistent with the Commission's policy of applying a lighter touch in respect of administration, while placing greater emphasis on maintaining the highest standards of regulatory compliance.

Corporate and commercial

Recommended firms

Tier 1

Bedell Cristin
Carey Olsen
Mourant du Feu & Jeune
Ogier

Tier 2

Appleby Hunter Bailhache

Tier 3

Voisin & Co
Walkers

Bedell Cristin

Bedell Cristin employs 17 partners, three consultants and 22 further lawyers, and is highly regarded by clients and competitors alike.

Richard Gerwat heads the structured finance and securitization team, which consists of four partners and seven assistants. The firm underwent an expansion programme in 2005 with the development of Bedell Trust UK, which opened an office in the heart of the city of London. It is the first independent provider of ABCP conduit programme administration services in Europe and is headed by investment banker Geoff Simms. The firm also recruited Jens Pegel, a German securitization lawyer, to the team in Jersey. Recent clients have included the German bank DZ Bank, ABN Amro, and the German Landesbank, Helaba.

In one standout deal, the firm acted for DZ Bank in the establishment of a first to market €1 billion Luxembourg Stock Exchange listed note issuance programme for the purpose of raising Tier I regulatory capital for the bank, and represented ABN Amro in completing a number of large structural amendments to its Amstel Euro funding corporation Euro commercial paper issuing programme. The programme has already proved to be extremely successful, having grown in size to a programme limit of €35 billion at the time of writing. Helaba is a German Landesbank which has which has always been an active player in the capital markets and securitization arena; Bedell Cristin recently acted for Helaba when the bank sought to set up its HT Finanzanlage structured note programme.

Peter Byrne heads the banking department, which consists of four partners and 10 assistants and which has advised on a number of impressive deals in the last year. The firm saw a large influx of instructions from banks lending into structures involving one or multiple Jersey proprietary unit trusts, and continues to advise leading international banks on matters of a local nature. The group, which added Mark Dunlop to the fold this year, maintained its presence on a number of official bank panels, including HSBC, Barclays, Deutsche Bank, the Royal Bank of Scotland and NatWest.

Scandinavia is another fruitful source of work for the firm – other clients include a number of leading Scandinavian banks such as FöreningsSparbanken, Nordea Bank, Skandinaviska Enskilda Banken, Handelsbanken Capital Markets and Svenska Handelsbanken. The banking team advised these banks as arrangers of a SEK12 billion term loan and revolving facilities granted to Eniro in relation to the financing of its acquisition of Findexa. The firm also advised Goldman Sachs Credit Partners and Prudential Finance in connection with a £280 million syn-

dicated term loan facility, and acted for Dresdner Bank in connection with the £205 million acquisition financing of energy utilities businesses in Jersey, Portugal, the Isle of Man and Guernsey from International Energy Group.

The firm is noted by rivals as “having a reputation for great lawyers”, with Byrne, in particular, being singled out for “high recommendation” by one peer. Shane Hollywood is another partner recognised by peers for the quality of his work, especially in structured finance.

Leading lawyers

Peter Byrne
Richard Gerwat
Shane Hollywood
Martin Paul

Key contact partners

Peter Byrne
Richard Gerwat

Carey Olsen

Carey Olsen’s banking practice is led by Paul Sudgen and Anthony Olsen, who lead a team of six senior associates and two associates. Over the past year the team provided Jersey law advice to Bayerische Landesbank as lead manager of a three-bank syndicate that provided financing to the FI Group, and acted for Bank Leumi on its acquisition of the Riggs Bank subsidiary banking and trust company operations in Jersey. The team has also acted for HSBC on the development and funding for a new four-star hotel on the Jersey waterfront, to be managed by SAS Radisson. Other clients include BNP Paribas, Bank of Scotland and Citibank.

The corporate and commercial team, led by Nicholas Crocker, Alex Ohlsson, Edward Quinn and Alan Stevens had a good year acting for, among others, the Cartucho Group on its listing on London’s Alternative Investment Market.

Investment funds are also a robust area for Carey Olsen. The team has recently advised Knight Frank Corporate Finance and the Antler Group in connection with the formation of the Access Feeder Unit Trust, a Jersey property unit trust established as a feeder fund for the Access Fund, a UK limited partnership formed to obtain a portfolio of UK property for £38.5 million. Carey Olsen also acted as Jersey counsel in relation to an innovative \$250 million Jersey export fund investing in ethanol production plants in the US. Other clients on the investment fund side include Brewin Dolphin, Pegasus Financial Services, Kleinwort Benson, Charterhouse Capital Partners and Citigroup.

Carey Olsen’s structured finance team, which Stevens also heads up, acted for Merrill Lynch on two standout deals this year. The first was the £46 million financing of UK property held through Jersey property unit trust, and the second was in relation to the establishment of a £400 million asset purchase facility under which a Jersey special purpose vehicle purchases loan receivables.

Leading lawyers

Eve Kosofsky
Alex Ohlsson
Edward Quinn
Alan Stevens

Key contact partners

Nicholas Crocker
Alex Ohlsson
Alan Stevens

Mourant du Feu & Jeune

After another strong year Mourant du Feu & Jeune continues to enjoy a strong reputation among rivals, one competitor remarking that “all the lawyers at Mourant are smart cookies”.

While this is undoubtedly true, a couple of individuals were picked out for special praise. Robert Hickling, the head of the capital markets team, is rated highly by his peers for his “good interaction with clients”, while Ben Robins is also well regarded by peers and is described as being “bright and personable, with a good attitude”.

Mourant fielded an M&A team, headed by Wendy Malorey, that acted for the Royal Bank of Canada in the acquisition of Abacus Financial Services Group, a major Channel Islands provider of fiduciary and wealth management services. Gareth Rigby and James Ruane advised Tesco in relation to the establishment of a number of Jersey private unit trusts that acquired two large retail sites in the UK, which contained Tesco hypermarkets with development potential and which had a combined value of £200 million. The duo teamed up again to advise Tesco on the sale of half its interests to a leading UK insurance group, and advised on loan facilities worth £165 million made available by a major UK bank to fund development of the sites.

The firm's banking practice has also had a successful year, winning noteworthy mandates from a series of impressive clients. Jonathan Walker and James Ruane were instructed to act on the 2005 restructuring of power station Drax's £1.4 billion-worth of debt, which resulted in Drax's shares being listed on the London Stock Exchange and a greatly reduced debt level. Hickling and Rigby, meanwhile, advised the British Land Company and subsidiary companies on the complex issues of Jersey law arising out of the £2.8 billion refinancing of the Broadgate Estate, the premium City of London office estate, much of which is held through Jersey vehicles. And the firm also represented a leading UK-headquartered global bank on the establishment of a Jersey investment structure with initial subscriptions of €2 billion.

Mourant's capital markets capability is also strong. Standout deals from a busy year for the practice include advising on the establishment of a \$7.5 billion medium-term loan note programme arranged by the Royal Bank of Scotland, acting for Aria CDO II in a \$10 billion structure arranged by JP Morgan Securities with Axa Investment Managers, and guiding Findexa through its sale to Eniro for SKr7.9 billion (\$1.1 billion).

Leading lawyers

Edward Davenport
Tim Herbert
Robert Hickling
Ian James
Jacqueline Richomme
Ben Robins

Key contact partners

Edward Davenport
Robert Hickling
Alistair Syvret

Ogier

Operating from Jersey, the Cayman Islands, Guernsey and London, with administration services in Ireland and New Zealand, Ogier is one of the largest and fastest growing offshore legal firms. The firm has 29 partners, around 145 lawyers and 500 people overall in the key offshore centres of Jersey, Guernsey and Cayman.

Julian Clyde Smith heads up the firm's banking practice in Jersey which during the year has acted on a large number of high-profile transactions. “Well-regarded lawyer” Chris Byrne and Nick Ward acted for Eurohypo on the provision of a £430 million credit facility to a Jersey limited partnership structure, the Royal Bank of Scotland on a £1.2 billion refinancing of Center Parcs and Barclays, in relation to a £35 million loan facility to a

UK joint venture structured as a Jersey trust. The firm also acted for RBS in connection with the acquisition by the borrower of units in six Jersey property unit trusts (JPUTS) valued at £250 million and Barclays in connection with a contribution of £88 million-worth of property into JPUTS and on the sale of units. Other banking clients include HSBC, ABN Amro and Royal Bank of Scotland International.

The “highly regarded” Marc Yates heads up the firm's impressive corporate and commercial practice and recent clients include CI Traders, Investec, Apax Partners, Abacus and Cazenove, which the firm advised on a joint venture in relation to their respective banking businesses with JP Morgan Chase and the demerger of the Cazenove fund management business. The firm also advised Westmount Resources on the return of cash to shareholders following sales of the company's North Sea interest and part of their holding in Sterling Energy and Phoenix Equity Partners on the sale of the Jimmy Choo business.

Ogier also has a very substantial fund practice headed by leading lawyer Nick Kershaw. Among the year's highlights, Mike Lombardi and Niamh Lalor advised Standard Life in relation to the unitization of a portfolio of shopping centres and retail parks in the UK which raised £2 billion and acted for Intermediate Capital Group in relation to the establishment of Intermediate Capital Asia Pacific Mezzanine Fund 2005, an expert fund worth £500 million and comprised of three Jersey limited partnerships which will make mezzanine investments in the Asia Pacific region. Meanwhile, Kershaw, along with Mathew Mulry, acted for a Swiss venture active fund advisor in relation to the establishment of a €300 million Jersey expert fund comprising Jersey and Delaware limited partnerships. Elsewhere, Kershaw and Mulry, along with Richard Thomas and Tim Morgan, acted for a number of international law firms and investment clients into Jersey. Lombardi and Alistair Hunter also advised Citigroup Global Markets in relation to the establishment of the Bluebay European Credit Opportunity Fund, an expert fund structured as a unit trust, which invests in a portfolio of loans, bonds, special situation assets, synthetic securities and short obligations.

The structured finance team, led by Chris Byrne, also saw strong growth over the last 12 months. The firm acted for MBIA on a \$20 billion ECP, USCP and capital note conduit, and Poseidon Funding on a €5 billion ABCP programme arranged by HSH Nordbank. The practice also won a role advising the National Bank of Greece on the issue of a €230 million non-cumulative guaranteed non-voting preferred security. Securitization is another productive area for Ogier, and recent standout deals have included a \$2 billion principal protected note programme for American International Group (Banque AIG) and a €45 million ABS transaction arranged by Abn Amro in relation to car lease receivables. The firm has also acted for Merrill Lynch International on two collateralized debt obligations (CDOs). Both of these were secured note programmes valued at \$50 billion and \$50 million respectively.

Leading lawyers

Chris Byrne
Nick Kershaw
Marc Yates

Key contact partners

Chris Byrne
Marc Yates

Appleby Hunter Bailhache

Bailhache Labesse recently announced that it will be merging with Bermuda firm Appleby Spurling Hunter on September 1 2006. The information provided concerns Bailhache Labesse before the merger.

The corporate and commercial practice at Bailhache is headed by Mark Lewis and consists of five partners and eight associates. Among this year's deals, Bailhache advised on several Jersey Property Unit Trusts transactions relating to the sale of UK commercial property valued at £500 million. The firm also acted as advisor and administrator in connection with a number of high-profile share option plans to Diageo and Marks & Spencer. Other corporate and commercial clients include HBOS, Barclays and Protego Real Estate Investors.

The firm has also been strong in capital markets work over the last year and has added two associates to its practice: Andrew Weaver was recruited from Ogier and David Haigh from Mellon Bank. Equity capital markets instructions have included advising Wellington Venture Partners in establishing a new life science fund worth €120 million. The firm also acted for Aberdeen Asset Managers in creating a Jersey-incorporated investment trust with the listing of warrants and shares on the London Stock Exchange, valued at £112 million. Another prominent deal saw "well-regarded" funds consultant Simon Howard and Weaver advise Altor Equity Partners in establishing a private equity fund with an initial €1 billion offering. The practice also won a deal advising DTZ and Concorde Capital on the launch of a number of Ukraine closed-ended property funds. Other equity capital markets clients include Equity Trust, State Street, Aztec Financial Services and Merrill Lynch.

On the debt side of things, the firm acted for Alexander Forbes International on an issue of £105 million floating rate notes, and also assisted in numerous listings on the Channel Islands Stock Exchange.

Bailhache has also been involved in a number of structured finance deals, advising Northcross Capital on Jersey legal issues with regard to the establishment of a \$20 billion US arbitrage commercial paper programme, acting for Morgan Stanley in a listing of class B preference shares valued at \$250 million, and guiding Aberdeen Asset Management through an issue of 80,000 non-voting perpetual preference shares valued at £80 million and listed on the London Stock Exchange.

Key contact partners

Simon Howard
Mark Lewis

Walkers

In July 2006, Crills Advocates became part of global law firm Walkers, and as part of the Walkers team, Crills Advocates' name has changed to Walkers. At this stage it is too early to gage the impact of the merger with Walkers so the firm maintains its position in the third tier. However, its potential has been noted by rivals, with one commentator suggesting that the firm "could definitely move up as they have the potential".

Walkers (ex-Crills Advocates) continued its recruitment drive this year with the recruitment of Andrew Pinel from Carey Olsen and solicitors Guy Morris and Richard Davison.

The firm has seen a certain amount of activity in banking over the last year on various transactions that are as yet not cleared for

publication. Other banking clients include Abbey National, Lloyds TSB, Lombard, Hambros and Barclays.

During the last year Walkers has advised on a number of corporate and commercial deals, both substantial international cross-border and smaller local transactions. The firm was instructed on around 20 substantial deals with a value of £5 billion, most of which were led by Jonathan Bale. These include providing advice on a range of Jersey regulatory and technical issues to the European lead lawyers for ABN Amro, De Brauw Blackstone Westbroek, on the sale of ABN's offshore trust company to a local Jersey trust company. Walkers also provided the full range of corporate advice on several transactions to a new client, a \$6 billion US Real Estate Investment Trust, in its acquisitions of leisure facilities in the US and Canada. Some local recent deals include advising the management of a software provider on an acquisition of a substantial stake in the business from the current shareholders. The firm provided the full range of corporate and commercial advice to long-standing client, Royal Brees Hotel, in what is believed to be the largest sale of a hotel as a going concern in Jersey.

The structured finance and capital markets capability of Walkers is also noteworthy, and in the last year the total of transactions advised upon by the firm was £1 billion. Significant transactions included a £3 million listing by Draganfly Investments on the Alternative Investments Market and listings on Ofex by Peach Blossom Media and China Education Group both for £1 million each. Competitors cite Hiren Patel as an integral reason for this continuing success with one rival stating "he's only been there for a short period of time but has a great future".

Leading lawyer

Peter Harris

Key contact partners

Jonathan Bale
Peter Harris
Hiren Patel