

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 about 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 UK 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 2005, there were 490 funds established in Guernsey, with a combined value of more than £59 billion (\$103.7 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. 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.

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 UK and certain other jurisdictions), whereas the rules relating to funds aimed at qualified investors are far more flexible. 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 setting up 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

While 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 issuing 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 companies, enabling a single company to effect a number of issues of securities (through separate cells) without the assets that secure the payment of one class of securities being available to the holders of another class of securities.

Recent developments

Until 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 specifically 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 this estimation is allowed, will grant waivers of the rules requiring segregation of subscription and redemption monies.

In February 2005 the Commission announced the streamlining of the approval process for both open- and closed-ended investment funds aimed at professional, experienced and knowledgeable investors (qualified investors). The Commission has undertaken to grant an investment fund approval within three working days, provided that an appropriately licensed Guernsey applicant has certified to the Commission that: (i) the fund will be restricted to qualified investors; (ii) the applicant has conducted due diligence on the promoter and associated parties and has found them to be fit and proper; and (iii) the applicant is satisfied as to the fund's economic rationale and the disclosure of any risks associated with the investment vehicle.

Corporate and commercial

Recommended firms

Tier 1

Carey Olsen

Ozannes

Tier 2

Babbe Le Pelley Tostevin

Collas Day

Ogier

Carey Olsen

Carey Olsen's corporate and commercial team is led by Nigel Carey and is made up of four partners, four senior associates, six associates and four legal assistants. Over the course of 2004 the firm recruited Mike Jeffrey, who joined the firm from Freshfields, and ex-Allen & Overy lawyer Christian Saunders. Graham Hall remains a respected lawyer for corporate advice, and is an individual who satisfies the "experience and knowledge criterion" of his clients.

Bristol & West turned to Carey Olsen for advice last year in connection with the sale of mortgages by Bristol & West International to the Royal Bank of Scotland. The deal was valued at £300 million (\$532 million). The firm has also advised various accountants in the Channel Islands in relation to the effects of the US Sarbanes-Oxley legislation, and partner Edward Quinn advised Royal Bank of Scotland on a property deal involving the sale and subsequent lease of properties, a £370 million deal that involved 86 UK properties occupied by Volkswagen.

Among the year's other highlights, Quinn acted as chief adviser to the Allianz group, providing legal guidance in relation

to its £775 million purchase of Four Seasons & Principal Healthcare nursing homes from Alchemy private equity partners.

Other clients of the corporate and commercial practice include Warner Estates Holdings, Deutsche Bank, BNP, Zurich Group and the Bank of Ireland.

Leading lawyers

Nigel Carey
Graham Hall

Key contact partners

Nigel Carey
Edward Quinn
Alex Ohlsson
Alan Stevens

Ozannes

Clients were quick to single out Ozannes for its quality of service, cost effectiveness, delivery efficiency and the experience of its partners. And in the words of one competitor, Ozannes "is still number one [and] has a strong corporate team." This high regard is reflected in the excellent and large volume of deals in which the company has been engaged over the past 12 months.

Axa Investment Managers instructed Ozannes when it required advice on a £150 million (\$266 million) deal that involved setting up a European commercial property fund. Gavin Farrell oversaw this deal, and also led an Ozannes team on a similar matter for F&C Asset Manager when it wanted guidance on setting up a £1 billion listed closed-ended property fund. The F&C deal involved the offer of 735 million shares at 90 pence a share, and the issue of £230 million-worth of secured bonds.

Ozannes also acted for the Narine Trust Co on a deal of particular interest because it involved setting up one of the first qualifying investor funds – a fund of alternative funds – with a Swiss investment manager. A derogation allowed the Swiss bank to become custodian because of the flexible authorization policy for hedge funds. Other clients of the firm have included Pinder Fry Benjamin, EFG Private Bank, Investec World Axis, Close Fund Management, Hermes Absolute Return Fund and the First National Bank of South Africa.

From a strong team of lawyers, Ben Rencher is singled out for being, in the words of one client, "knowledgeable and efficient." Peter Harwood, meanwhile, is also well known and well respected in the industry.

Leading lawyers

Peter Harwood
Ben Rencher

Key contact partner

Peter Harwood

Babbe Le Pelley Tostevin

Geoffrey Allez heads the corporate practice at this “extremely well-regarded” firm, which this year has seen the arrival of consultant Charles Wilkinson. Wilkinson is a former partner of Lawrence Graham, and former managing partner of Blyth Dutton. This brings the count of personnel in the corporate department to five.

Recent deals have included advising on ABN Amro’s sale of the Condor Group to RBS, a Channel Islands shipping company, in a deal reportedly valued at £240 million (\$426.74 million) that was closed in late 2004. Babbe Le Pelley Tostevin’s advice was spearheaded by Mark Helyar. In April 2005 Helyar also led a team that represented the lenders (the Royal Bank of Scotland and Dresdner Kleinwort Wasserstein) on the £210 million public offer for International Energy Group, a Guernsey gas supplier with businesses in the UK, Jersey and Portugal.

In March 2005 Babbe Le Pelley Tostevin was busy on two notable deals, also handled by Helyar. In the first, the firm advised HSBC in connection with the £12 million purchase of XKO Communications, and in the second, provided advice to Canadian mining company Landore Resources on its £6 million initial public offering, whereby it delisted from the Toronto stock exchange and relisted in the UK through a Canadian court-approved scheme.

Key contact partner

Mark Helyar

Ogier

Partner William Simpson heads up Ogier’s Guernsey office, and was described by one interviewee as “one of the gurus of funds work.” Simpson heads a corporate department that has, according to one client, “more people with more experience in the corporate field ... they have more depth.” And Ogier has increased its numbers over the past year, recruiting Simon Davies from Carey Olsen.

Ogier’s clients over the past year included Northern Trust, which was advised by a team from Ogier headed by respected lawyer Roger Le Tissier in relation to the acquisition of a bank, fund administration and trust company. NM Rothschild/Merrill Lynch also came to the firm for advice in connection with setting up special purpose vehicles for securitization purposes for Real Estate Capital.

Other clients include Dexion Absolute, Dominion PPC, Crystal Fund, Dexion Trading, Schrodgers and Matrix Securities.

Leading lawyer

William Simpson

Key contact partners

Roger Le Tissier

William Simpson