

# Jersey

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## Marc Yates Ogier St Helier

Over the past 30 years, Jersey has established itself as one of the world's premier offshore financial centres. Jersey entities are at the core of a wide range of corporate finance transactions, and Jersey's success is underpinned by its modern legal and regulatory framework and by the breadth and depth of the professionals based in the jurisdiction.

In the area of corporate finance, there was one aspect of Jersey law that was not, however, similar to most of the rest of Europe – there was no specific legislation controlling the merger and acquisition process. That changed on May 1 2005, when the Competition (Jersey) Law came into force, which is to be regulated by the Jersey Competition Regulatory Authority (the JCRA).

In summary, the new law imports into Jersey law two main concepts of EU competition law, outlawing: (i) arrangements between undertakings that have as their object or effect the hindering of competition in the supply of goods or services within Jersey; and (ii) the abuse of a dominant market position.

The new law also provides for a mergers and acquisitions approval system.

Perhaps the most radical part of the new law – bearing in mind that Jersey is outside the EU – is that it provides that the JCRA and the Jersey courts will, so far as possible, decide competition questions in a manner consistent with the way in which such questions are treated within the law of the European Community.

Subordinate orders under the new law have been passed, setting the criteria for the transactions that must be referred to the JCRA for approval. Taking into account the nature of the Jersey market, and in particular its small size, it was decided not to follow the route of setting thresholds based on financial size or turnover, but by setting them based on a percentage share of supply of the relevant goods or services. As a result, where: (i) the parties to a transaction have a combined share of supply of 25% or more (in the case of a horizontal merger); or (ii) one of the parties has a share of the supply of 25% or more (in the case of a vertical merger); or (iii) one of the parties has a share of 40% or more (in the case of a conglomerate merger), JCRA approval must be sought.

If this aspect of the new law is breached, neither the title to shares in any Jersey company (in a share acquisition) nor the title to any property in Jersey will pass under the terms of any merger or acquisition agreement. There are also financial penalties.

The JCRA can approve, conditionally approve or refuse to approve a merger or acquisition. The grounds upon which the JCRA may refuse to approve a merger or acquisition are: (i) that the merger or acquisition would substantially lessen competition in Jersey or any part of Jersey; or (ii) if any document or information requested by the JCRA in connection with the application for approval is not disclosed within a reasonable time of it being requested.

The Jersey government has the power to exempt a merger or acquisition from requiring approval, but only where there are exceptional and compelling reasons of public policy for doing so.

In other areas, proposed changes to Jersey law that impact on corporate finance are those expected to come into force during 2005 concerning netting, contractual subordination and non-petition provisions.

Many contracts, especially in complex financing transactions, include those provisions and, until now, in the view of legal practitioners in Jersey, they would be upheld by the Royal Court of Jersey as a matter of the general customary law of Jersey. However, the authorities in Jersey have recognized that other jurisdictions have specific statutes on these matters and, as a consequence, a new law has been passed confirming that the contractual arrangements relating to netting, contractual subordination and non-petition will be upheld by the Royal Court of Jersey. In particular, these provisions will be enforceable in the case of agreements between more than two parties, or parties acting through multiple branches, removing possible arguments as to lack of mutuality. Such provisions will remain enforceable despite the bankruptcy of any party to the agreements, or of any other person. This will be of particular help to counterparties entering into ISDA master agreements with Jersey entities.

## Corporate and commercial

### Recommended firms

Tier 1

**Bedell Cristin**

**Carey Olsen**

**Mourant du Feu & Jeune**

**Ogier**

Tier 2

**Baillhache Labesse**

**Voisin & Co**

Tier 3

**Crills Advocates**

### Bedell Cristin

Headquartered in St Helier, Bedell Cristin employs 12 partners, two consultants and 26 other lawyers. The firm is highly recommended by clients, and is a regular fixture on the panels of major institutions.

Richard Gerwat heads the firm's structured finance and securitization team, which consists of four partners and 12 associates. Recent clients have included JP Morgan Chase Bank and KCB. JP Morgan turned to the firm for advice in relation to setting up the \$15 billion Chariot conduit structure; Alex Carus and Shane Hollywood were the Bedell lawyers involved in the deal. KCB, meanwhile, came to the firm when it needed assistance with the €225 million (\$277.3 million) Fulham Road synthetic collateralized debt obligation structure, and Goldman Sachs also drew on the firm's expertise to conduct a series of high-value structured transactions involving Jersey companies and trusts.

Other clients of the team have included Lloyds TSB, which the firm advised in relation to establishing a \$12 billion paper conduit, and IKB Deutsche Industriebank, which sought advice over a commercial paper conduit programme. The structured finance team has assisted a raft of other international banks and financial institutions, including: Barclays Bank, for which it acted on two further issues under the Barclaycard credit card receivables securitization programme worth a total of \$1.75 billion; Capital One Bank, which turned to the firm for advice on four further issues under the Capital One credit card receivables master trust structure worth more than £1.1 billion; and Danske Bank, which the firm advised when it funded the Egg Banking credit card structure through a £250 million facility provided by its commercial paper-issuing conduit, Polonius.

The banking department consists of four partners and seven assistants, and over the past year has advised on an impressive number and range of deals. The Royal Bank of Scotland is a regular client, and over the past year the firm advised it on the £120 million investment loan facility for a new £200 million UK property investment fund set up by Invesco and structured as a Jersey closed-ended investment company, and on its provision of a £39.25 million senior facility and an £8.45 million junior facility in connection

with financing Vectacase's acquisition of Wellcome Trust in Sussex Mansions. The firm also provided guidance to Lloyds TSB Bank in relation to a £75 million credit facility provided to Gresham Property Partners, advised Galleria in connection with a £78.8 million term loan facility provided to it by Württembergische Hypothekenbank, and acted for Colworth Park Limited Partnership, a Jersey limited partnership, in relation to a £23 million credit facility provided by the Royal Bank of Scotland.

Acquisition work (and related financing) has been another strong area for the firm. Over the past year it has advised Alchemy Partners in relation to its £775 million sale of the Four Seasons Health Care and Principal Healthcare groups to Allianz Capital Partners, acted for the Condor Shipping Group in relation to ABN Amro Capital's disposal of its stake in the Group to the venture capital arm of The Royal Bank of Scotland plc in September 2004 and the post-acquisition refinancing of the company, and represented FirstRand in relation to the sale of wealth management group Ansbacher Holdings to Qatar National Bank.

The firm also maintains a strong private equity practice headed by Martin Paul, which continues to be busy advising international funds on all aspects of domestic and international fund and hedge fund work. Clients have included Clos Global Funds, EFG Defensive Fund, Italian Lifestyle Partners, Merrill Lynch and Kedge Capital Private Equity. Among the year's standout deals, the firm acted for Merrill Lynch in relation to migrating to Jersey subsidiaries the management, distribution and registrar functions of 30 UK authorized unit trusts, three UK unauthorized unit trusts, four UK common investment funds regulated by the Charity Commissioners of England and Wales, and four wrapper PEP and ISA products, as well as on setting up the Merrill Lynch Liability Plus Fund and the Merrill Lynch Diversified Real Estate Plan.

The firm has also represented Pacific Equity Partners, Australian-focused private equity fund, in relation to its establishment, advised on the set up of Regent Residential Trust, Regent Retail Parks Trust, Two Rivers Trust and the Whitgift Shopping Centre Trust, and acted for Stirling Square Capital Partners III when it became the third in a series of UK limited partnerships to be set up as a private equity investment vehicle for investment by a subsidiary of Citigroup in companies in the EU, Switzerland and Norway.

### Leading lawyers

Peter Byrne

Richard Gerwat

### Key contact partners

Edward Bennett

Peter Byrne

Richard Gerwat

Shane Hollywood

Martin Paul

Michael Richardson

## Carey Olsen

Carey Olsen is a well-respected firm that boasts a raft of excellent partners, many of who received strong praise from clients. Among them, Eve Kosofsky possesses “great depth of knowledge” and has “excellent relations with the client and regulators alike,” and Nicholas Crocker and Alan Stevens “both get the job done and understand what is required of them ... they have an innate understanding of structures, which is crucial.”

Carey Olsen’s banking practice is led by Paul Sudgen and Anthony Ohlsson, who manage a team of two senior associates and six associates. Over the last year the firm advised a leading global bank as it relocated from the Cayman Islands to Jersey, which required the firm to arrange all the necessary regulatory consents and licences in 48 hours. Other clients include a raft of leading international investment banks, such as Bayerische Landesbank, HSBC, BNP Paribas, ABN Amro and Deutsche Bank, as well as the Jersey Financial Services Commission.

The commercial property team has also had a buoyant year, advising on several hotel and business premises deals in Jersey. The firm is also strong for corporate and commercial work, and the 18-lawyer team has supplied legal advice to, among others, Bristol & West International, which the firm advised during the sale of its mortgage book, one of the largest in the Channel Islands.

Funds work is also a strong area for the firm, and the practice is headed by partners Kosofsky and Edward Quinn. The team has recently advised Lend Lease in relation to the setup of two domestic property trusts, one of which was the unit trust holding the £1.1 billion (\$1.95 billion) Bluewater shopping centre in Kent; the other trust holds the £137 million Overgate shopping centre in Dundee. The firm also advised on the establishment of two partnerships for Sunrise and PRICOA, investing in homes in the UK and Germany to the value of around £1 billion. Other clients included Matrix Film Finance, Collins Stewart and UBS Capital Equity Funds.

Under the guidance of Alan Stevens, Carey Olsen’s structured finance team, meanwhile, acted for Bradford & Bingley on a £10 billion covered bond programme and on a \$15 billion commercial paper and promissory note conduit structure, and Ohlsson provided advice to Grove Finance in relation to a \$3.75 billion equity-linked debt issue for the monetization of BP shares. Other clients in this area include Royal Bank of Scotland, Warner Estate Holdings, Société Générale and the Akeler Group, which the firm advised on its £50 million financing of development parks in the UK.

### Leading lawyers

Eve Kosofsky  
Alex Ohlsson  
Alan Stevens

### Key contact partners

Nicholas Crocker  
Alex Ohlsson  
Alan Stevens

## Mourant du Feu & Jeune

In the words of one market observer, Mourant du Feu & Jeune is a “top-quality firm” that gives excellent advice to high-level clients in the banking, structured finance and securitization, and corporate and commercial spheres. In 2004 the firm consolidated its position not only as a domestic but also as an international player, opening an office in the Cayman Islands and recruiting three lawyers from Maples & Calder. Mourant is a firm that is “going from strength to strength,” according to one client.

The firm’s corporate and commercial team acted for long-standing client JP Morgan on its offshore joint venture with Cazenove, which involved advice on the venture’s structure and regulatory matters. Mourant fielded a team of advisors headed by Robert Hickling and James Ruane. Royal Bank of Scotland International was another corporate and commercial client, for which the team prepared and negotiated the sale documents for Bristol & West’s mortgage portfolio sale. The firm also advised on the property aspects of the transaction, and liaised with lawyers in Guernsey and the UK during completion. Mourant’s advice was also required during Alfa-Eco’s exit from Sun Interbrew. Mourant was instructed by Herbert Smith, and the nine-month transaction culminated in a disposal to InBev valued at \$352 million. Alistair Sivret is considered by many in the market to be the leading individual in the corporate and commercial team.

The firm’s banking practice has also had a good 12 months, advising a string of high-profile clients: in 2004 Mourant du Feu & Jeune was instructed by every one of the top UK law firms and many leading US firms in respect of banking advice, and also acted for nine of the world’s top 10 banks.

One key client was the Royal Bank of Scotland, which a Robert Hickling-led Mourant team advised in relation to project Caspar. This project involved providing senior financing to a £770 million (\$1.37 billion) property fund launched by Henderson; the complex structure of the deal involved Mourant’s team advising on a myriad of sophisticated loan and security arrangements surrounding a fund structure (including seven Jersey unit trusts), overlaid with senior and mezzanine credit and security arrangements and topped by a securitization structure. A separate team advised the borrower in the transaction, and a third team advised BNP Paribas in relation to its role as professional trustee of the various Jersey unit trusts.

Another banking deal saw the firm provide advice to a large UK bank in connection with the acquisition of fashion brand Jimmy Choo. The deal was valued at £101 million, and required the firm to advise on the Jersey law aspects relating to the credit and security arrangements. Mourant also worked for a leading Jersey bank on a £130 million loan facility granted to a listed Jersey trading company, which was secured over 100 properties in three jurisdictions.

The firm also retains a strong reputation for its structured finance and securitization work, and was recently retained by the Bank of Scotland to advise it on the £153 million securiti-

zation of rents from property in London owned by a limited partnership formed under Jersey law. The partnership entered into a £138.5 million bridge facility agreement as well as related security arrangements in connection with a refinancing, and subsequent issue of commercial mortgage-backed securities by Picts. Mourant advised on all elements of Jersey law through its offices in London and Jersey.

The firm was also involved in the first-ever European wind farm securitization, arranged by HypoVereinsbank for Energiekontor. The deal involved the issue of €100 million (\$123.76 million)-worth of notes secured on eight German and Portuguese wind farms, and was a landmark deal for the European securitization market because it opened up a new securitization asset class. In relation to whole-business financing, banks are usually reluctant to lend much beyond nine years – this deal was structured to allow Energiekontor to obtain funding that matched the 20-year tariff agreements it had entered into with German and Portuguese regional utility and grid operators. Mourant advised the note issuing vehicle, Max One.

Mourant's securitization team also provided advice on a JP Morgan-arranged synthetic collateralized debt obligation (CDO) by a multi-issuer structure involving 10 Jersey issuers. The deal marks the first widely offered managed synthetic CDO to combine CDO and medium-term note technology, allowing bespoke tranches of notes to be marketed using standardized underlying programme documentation.

The funds team also had a busy year. AXA Private Equity turned to the firm for advice in connection with the establishment of AXA Secondary Fund III, which held over \$1 billion of commitments at the end of 2004 and which was the first private equity fund authorized under Jersey's Expert Funds regime. Cyman Davies and Daniel Birtwistle lead the Mourant team, which dealt with the Jersey structuring and regulatory issues. The fund has consequently gone on to complete its first big deal, acquiring \$560 million-worth of private equity assets from Crédit Agricole in June 2005; Mourant lawyers Gareth Rigby and Catherine Eshun worked on the acquisition.

Mourant also acted for Symphony Structured Products in relation to setting up 10 sub-funds, and acted for Lyxor Asset Management (a subsidiary of Société Générale) in relation to setting up a groundbreaking hedge fund programme comprising around 140 standalone Jersey open-ended collective investment funds.

#### Leading lawyers

Edward Davenport  
Tim Herbert  
Ian James  
Jacqueline Richomme

#### Key contact partners

Edward Davenport  
Robert Hickling  
Alistair Syvret

#### Ogier

Ogier is one of the world's largest offshore firms, employing some 400 employees operating out of offices in Jersey, Guernsey, the Cayman Islands, New Zealand and London.

Marc Yates heads up the firm's banking practice in Jersey and, according to one competitor, "is held in high regard." Along with Sara Johns and Robin Smith, Yates acted for the Bank of Nova Scotia when it sold off its banking and trust businesses to Barclays Private Bank & Trust. The firm also acted for Randgold Resources, the London and Nasdaq-listed gold mining company on a £60 million (\$107.2 million) project finance term loan for the development of a new mine in Mali. Yates headed a team that advised CI Traders in relation to a £130 million facility provided by the Royal Bank of Scotland International in connection with the public offer by CI Traders for the entire issued share capital in ComProp. Other banking clients include HSBC, Barclays Bank and Alpha Bank, which the firm advised on a hybrid securities issue valued at €200 million (\$247.371 million).

Corporate clients have included Westmount Energy, The Guiton Group, Highland Gold, Deutsche Bank, Société Générale and Sun Interbrew, which the firm advised in relation to its £38 million rights issue. The firm also advised on the State of Guernsey's acquisition of Aurigny Airlines.

Ogier's fund practice is also strong. Roger Le Tissier heads this practice area, which has recently acted for Jupiter Astral Fund in respect of its redomiciliation to the Cayman Islands. Ogier continues to act for many international funds, providing advice and guidance at all levels of the creation and management of such funds. One of these was the formation and launch of the Collier International Partners fund, a closed-ended fund made up of two Cayman partnerships administered from Guernsey. The fund was set up to invest in mezzanine funds, buyout funds, venture capital funds and, at \$2.5 billion, is the biggest secondaries fund in the world at the time of writing. Le Tissier acted on the deal, and has also advised clients including Dexion Absolute, the Puma Property Fund, the EQT Mezzanine Fund and the Asian Conservation Company, the latter of which sought advice from the firm as it transferred a Guernsey holding company structure into a Guernsey and Philippine investment fund structure to fund south-east Asian environmental enterprises.

Nick Kershaw has also been active for the firm in funds work over the past year. Along with Matthew Mulry, Kershaw is acting for a Swiss venture capital fund to help set up a Jersey expert fund made up of Jersey and Delaware law partnerships. The deal is valued at €300 million. The firm has also advised on setting up a \$100 million corporate investment fund in Tunisia, and provided advice to Standard Life as it set up two unit trusts valued at £2.2 billion to invest in UK shopping centres and retail parks.

Structured finance advice is another of Ogier's strong suits. Chris Byrne heads the firm's team, which has a wealth of experience acting for international financial institutions as well as on numerous transactions for Jersey limited partnerships, including transactions arranged by HSBC in Hong Kong. Securitization is

a fruitful area for the firm, and over the past year it has assisted with Aardvark Funding's setting up of a \$500 million variable funding note programme on behalf of the Oppenheimer Funds Group, advised Alis Finance on a €465 million French motorway securitization deal, and acted on Annington's £501 million repackaging arranged by Morgan Stanley. Other clients include Cheyne Investment, and Chrome Funding, which the firm advised during a €5 billion deal. Curzon Funding turned to Ogier for advice on setting up a \$53 billion medium-term note issuing structure.

#### Leading lawyers

Chris Byrne  
Marc Yates

#### Key contact partners

Chris Byrne  
Roger Le Tissier  
Marc Yates

#### Bailhache Labesse

Bailhache Labesse's corporate and commercial department comprises 14 partners and 27 associates. This highly respected firm is a member of the State Capital Global Law Firm Group, and continues to impress with its banking, M&A and capital markets advice.

The firm's banking practice has had a good year, with a range of partners spearheading the firm's advice on the standout deals. Mark Lewis led a team that advised a UK bank in connection with an £80 million (\$143.6 million) loan to a Jersey-domiciled fund managed by an international investment manager. Simon Howard acted as sole Jersey counsel to a household-name company when the company elected to raise funds through a cash-box Jersey company and a share placing to finance the acquisition of a number of properties, in a deal worth £50 million. And over the past 12 months Wendy Benjamin has represented a UK bank in connection with a number of film financing transactions worth a total of around £150 million.

Capital markets work has been a traditional mainstay for the firm, and the past year has served to further reflect this strength. Outside of pure fund formation and transactional instructions, Bailhache Labesse has been heavily involved in the introduction of the expert fund policy and non-domicile fund policy into Jersey, which has enabled Jersey to compete on an equal footing with Caribbean jurisdictions.

The firm's work in this area has naturally meant it has been well placed to advise on fund formation work arising out of the new regime. For example, the firm acted on the formation of the C-View Currency Fund, one of the first hedge funds formed as an expert fund in Jersey with a direct appointment of a foreign prime-broker. The firm also advised Aberdeen Asset Management in connection with the long-running split-capital funds investigation in Jersey, probably the largest regulatory investigation ever undertaken by the Jersey Financial Services Commission. Other capital markets work has included acting for Nationwide in connection with the establishment of the \$2

billion Cobbler Funding Limited and Cobbler Funding LC asset-backed commercial paper programme, the first such programme set up for a building society, and advising Merrill Lynch on a series of listings of collateralized debt obligation-backed notes and preference shares on the Channel Islands Stock Exchange.

Bailhache Labesse's work extends beyond the financial markets, though, also encompassing mergers and acquisitions. Mark Lewis is the firm's most prominent partner in this area, and he led the firm's advice on both of its top deals last year. In the first, he advised Barclays on its purchase of the Bank of Nova Scotia's Channel Islands operations, as well as on the subsequent merger of Barclays Private Bank and Trust with the Bank of Nova Scotia Group in the Channel Islands. The deal marked the first time Jersey's new merger procedures were used to merge a Jersey banking subsidiary with a recently acquired banking subsidiary from another banking group. And in the second, the firm acted for Qatar National Bank in connection with its purchase of the Ansbacher Banking Group.

#### Leading lawyers

Simon Howard  
Mark Lewis

#### Key contact partners

Wendy Benjamin  
Simon Howard  
Mark Lewis

#### Voisin & Co

Voisin & Co is a relatively small firm, made up of two partners and three associates, and led by senior partner Ian Strang. The firm has recently provided advice to ED&F Man Holdings when it acquired the Volcafe Group, and also advised on the subsequent restructuring and integration of the new organization into the commercial group. The firm has a solid track record acting on large insolvencies, as well as providing advice to the Jersey regulator on a series of fund and financial services disputes.

Islamic finance is growing in importance across the world, and Voisins has developed a niche in the area, not least by forging strong links with the Gulf Cooperation Council to assist in the development of *Sharia*-compliant structures. This strength has led to an increasing profile for the firm throughout the Middle East, which has in turn brought further business to the firm from Gulf and international businesses. The *sukuk* Islamic security model has been a successful one for the firm, especially in the light of the firm's highly successful Caravan I securitization, which continues to receive attention in the Middle East.

Bill Gibbon continues to work with UK and international banks and insurance companies on capital markets structures, and both he and Kate Anderson have worked on transactions to develop the American Express offshore group structure. Capital markets work has included listing loan notes and securities on the Channel Islands Stock Exchange. Gibbon also advises a

range of funds, including Islamic clients, on different varieties of structure, including multiple-class umbrella funds and US real estate funds. The firm is also a leader in the development of *Sharia*-compliant hedge funds, as well as in relation to property and other fund restructurings.

**Key contact partners**

Bill Gibbon  
Ian Strang

**Crills Advocates**

Crills has been on something of a recruitment drive this year, increasing the size of its commercial team by 50%. Most notable among the new members of the team are Hiren Patel and Jonathan Bale; Patel joined in October 2004 from Appleby Spurling Hunter, where he was a partner, and Bale spent 10 years at Ogier.

Banking is a strong area for the firm, and mandates over the past year have included acting alongside Ashurst on Bayerische Landesbank's £28 million (\$49.85 million) financing of a unit trust property deal, and advising the Royal Bank of Scotland on a number of local property finance transactions ranging from £1.9 million to £7.9 million. Other banking clients have included Abbey, Nationwide Building Society, BNP Paribas, Deutsche Bank and Lloyds TSB.

The corporate and commercial team provides advice both to institutions and to private clients, and has recently advised China Wonder/SovGEM on their Alternative Investment Market listing, as well as on various matters that were not cleared for publication at the time of gong to press. Crills also has a strong funds advisory practice, in 2004 working on 28 deals worth a combined total of £600 million.

The arrival of Patel will surely boost Crills' already impressive structured finance and securitization credentials. Over the past year the firm acted for BNP Paribas on two deals: the Grand Chais II deal, which involved the securitization of trade receivables relating to wine and other alcohol products, and the Olympia Asset Funding Series 2004-1 securitization of certain credit card receivables for a Japanese joint-stock company, worth €218.9 million (\$269.9 million). The firm also acted as Jersey counsel in relation to winding up a securitization programme for Bred Banque.

**Key contact partner**

Peter Harris