

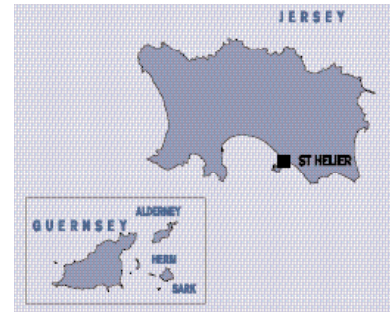
Guernsey

Chamber of commerce:

Suite 3
16 Glatigny Esplanade
St Peter Port
GY1 1WN
Guernsey
Tel: +44 1481 727 483
Fax: +44 1481 710 755

Professional body:

Guernsey Bar Council
Tel: +44 1481 712 277
Fax: +44 1481 712 245



Corporate finance legislation in Guernsey

Ian M Kirk
Collas Day
Guernsey

The Bailiwick of Guernsey

The Bailiwick of Guernsey comprises the islands of Guernsey, Herm, Jethou, Sark, Brecqou and Alderney. Each of the three main islands, Guernsey (which includes Herm and Jethou), Sark (including Brecqou) and Alderney, has its own legislative assembly, laws and courts (although sometimes of limited jurisdiction).

Certain statutes are enacted for the whole of the bailiwick. Guernsey and Alderney each have their own companies legislation, but the regulation of financial services is carried out through legislation that applies throughout the bailiwick.

The regulator

The Guernsey Financial Services Commission (the Commission) is responsible for the regulation of banks, insurers and insurance intermediaries, collective investment schemes and service providers to them such as custodians, managers and administrators, and the providers of fiduciary services such as corporate and trust administration.

Certain responsibilities of the Advisory and Finance Committee of the States of Guernsey have also been delegated to the Commission, such as granting consents under the Control of Borrowing Ordinance (see below).

Capital raising

The Control of Borrowing (Bailiwick of Guernsey) Ordinance 1959, as amended (the COBO) permits the Commission, acting through its delegated powers, to control the raising of finance.

The formation of companies in Guernsey is regulated under the COBO, which requires the consent of the Commission to the issuance of subscriber or founder shares.

Under the COBO, a person may not borrow money or give security or a guarantee in Guernsey where the aggregate amount of the loan and any other loans in the last 12 months exceeds £500,000 without the Commission's consent. But this does not apply to borrowing from a bank in the ordinary course of business.

The COBO also contains restrictions on the issuance of shares by companies incorporated in the bailiwick or bodies corporate whose shares are to be registered in the bailiwick.

Issuance and content of prospectuses

A person may not, without the consent of the Commission, circulate in the bailiwick any offer for subscription or sale of any securities if the offer is a public offer or if it is an offer to existing security holders of the body corporate or to existing holders of any body corporate specified in the offer. But there is an exception for securities



issued by the governments of the UK, Guernsey, Alderney, Jersey and Sark.

Consent is not required for offers for subscription or sale where the offer is being, or has recently been, made by a UK company in accordance with the Financial Services and Markets Act 2000.

The Companies (Guernsey) Law 1994 does not detail the content of prospectuses and the Commission has not published any rules in relation to content, although it has indicated certain general criteria in relation to closed-ended funds.

Listing particulars of securities listed on the Channel Islands Stock Exchange (the CISX) must comply with the CISX's Listing Rules. Of course, securities listed on foreign exchanges will need to comply with the rules of the relevant listing authority.

Marketing and promotion

Under the Protection of Investors (Bailiwick of Guernsey) Law 1987 (the POI Law), a person cannot carry on, or hold themselves out as carrying on, any controlled investment business in or from within the bailiwick, except under the terms of a licence granted by the Commission.

No bailiwick body may carry on, or hold itself as carrying on, any controlled investment business in or from within a country or territory outside the bailiwick unless it is licensed by the Commission to carry on that business in the bailiwick and that business could be lawfully carried on by it within the bailiwick.

Controlled investment business means engaging, by way of business, in a restricted activity in connection with a controlled investment. For the purposes of the POI Law, restricted activities include promotion, subscription (that is, receiving funds or assets for the purposes of investment), registration, dealing, management, administration, advising, acting as custodian and operating an investment exchange. Controlled investments include shares, debentures and other specified securities, derivatives and units in collective investment schemes.

However, the Commission has indicated that overseas securities can be promoted in Guernsey without the need for a licence if promoted by a local licensee, or if the promotion is only passive (for example, advertisements in the international press or on an overseas website not directly targeted at bailiwick residents) or if the promotion is only to other institutions licensed by the Commission and it is clear on the face of the prospectus that it is only intended for professional investors.

The CISX

The CISX is based in St Peter Port, Guernsey. It is licensed to operate as an investment exchange under Guernsey law and is regulated by the Commission. It was set up in 1998 as a joint venture between member organizations based both in Guernsey and in Jersey. It now has 31 members including banks, fund managers, fund administrators and law and accountancy firms. Since commencing operations on October 27 1998 it has approved over 300 securities for listing with a total market capitalization of \$17 billion.

The CISX's core products are listed as:

- specialist securities, including structured debt, Eurobonds, warrants and special purpose vehicles;

- investment funds;
- primary and secondary listings of securities and shares issued by Channel Islands companies; and
- primary and secondary listings of securities and shares issued by overseas companies.

The CISX has the following overseas recognition:

- It has been designated as a recognized stock exchange by the Inland Revenue under the UK Income and Corporation Taxes Act 1988.
- The US Securities and Exchange Commission has designated it as an offshore securities market for the purposes of Regulation S of the Securities Act of 1933.
- The UK Financial Services Authority has approved it as a designated investment exchange.

Mergers and acquisitions

No specific rules relate to the acquisition or merger process generally, and there are no general competition laws. Guernsey law does not provide for the compulsory acquisition of minority shareholdings after an acquisition where an acquirer has acquired a threshold percentage of shares in the target vehicle.

Guernsey law permits companies (one of which must be a Guernsey company) to amalgamate. Commission consent is required if one of the companies is regulated by it or one of the companies is not Guernsey registered. The detailed procedural requirements are set out in the Amalgamation of Companies Ordinance 1997.

The Migration of Companies Ordinance 1997 permits Guernsey registered companies to emigrate to another jurisdiction and foreign companies to be registered in Guernsey. Commission consent is required for both these processes.

The Companies (Financial Assistance for Acquisition of Own Shares) Ordinance 1998 is permissive. A Guernsey company may give financial assistance as defined in the ordinance if its memorandum or articles authorizes it to do so, and if it satisfies a solvency test as defined in the ordinance.

Change of control issues

When involved in corporate finance activity in Guernsey one must be alert to the fact that regulated entities may be involved.

Institutions licensed by the Commission, such as banks, investments, insurers and providers of fiduciary services, must notify the Commission within 14 days if a person becomes, or ceases to be, a significant shareholder. A significant shareholder is a person who, alone or with associates, is entitled to exercise or control between 5% and 15% of the voting power in a general meeting of that institution or of any other body corporate of which that institution is a subsidiary.

A person may not become a controller of an institution licensed by the Commission unless they have first notified the Commission in writing and received no objection. A person who ceases to be a controller must give notice in writing of that fact within 14 days. A controller includes a managing director, chief executive officer, shareholder controller or indirect controller. A shareholder controller is a person who, alone

or with associates, is entitled to exercise or control 15% or more of the voting power in a general meeting of that institution or of any other body corporate of which that institution is a subsidiary (or, in relation to an insurer set up as a protected cell company, a person who, alone or with associates, beneficially owns 50% or more of the cell shares issued in respect of any cell). An indirect controller is a person in accordance with whose directions or instructions any director of the institution or of any other body corporate of which that institution is a subsidiary, or any controller of that institution, is accustomed to act.

Corporate and commercial

Recommended firms

Carey Olsen

Ozannes

Babbe Le Pelley Tostevin

Collas Day

Ogier & Le Masurier

Carey Olsen

Formed by the merger of Guernsey's Carey Langlois with Jersey's Olsens in February 2003, there is no argument in the market that Carey Olsen is firmly established in the top tier of Guernsey's law firms. The firm offers advice in mergers and acquisitions, general corporate and commercial work, investment funds, general banking, capital markets and structured finance.

Clients of the firm include Alchemy Partners, Bank of Scotland, Barings, Credit Suisse (Guernsey Limited), HSBC Republic Management (Guernsey) Limited, Kleinwort Benson and Le Riche Group, and numerous city law firms. Recent deals have included acting for Old Mutual (Guernsey) Limited in connection with the sale of a personal portfolio bond sale to Generali, the restructuring of Permira Group, acting with Linklaters for Terra Firma Capital Partners II (Guy Hands) in its first acquisition, and acting for Royal Bank of Scotland International in connection with a loan to P123 Limited, set up as a feeder vehicle into the Permira 3rd European Fund.

The firm is highly regarded in the market. Nigel Carey and Graham Hall are described as "the top two lawyers in Guernsey," and Carey in particular is singled out for further praise as "easy to deal with" and "a safe pair of hands". Russell Clark is also recommended for trusts and private client work. Darren Bacon (a senior assistant) is recommended as a rising star, described as having "the personality and intelligence to join the ranks of leading lawyers in a few years".

Key contact partners

Nigel Carey
Fiona Fleming (London)
Graham Hall
Ben Morgan

Leading lawyers

Nigel Carey
Russell Clark
Graham Hall

Ozannes

Ozannes, described by its competitors as "an excellent firm" with "exceedingly good clients," continues to maintain its position as one of the two premier law firms in Guernsey. The firm offers advice on banking, debt and equity capital markets, structured finance, project finance, insolvency and restructuring, and mergers and acquisitions.

Recent deals have included: the corporate restructure of Lloyds TSB Group Offshore (run by deal partner Roger Perrot); acting as the sole external legal adviser on the issue and listing on the Channel Islands Stock Exchange of guaranteed floating rate notes issued by Hanson Finance Plc (run by deal partner Peter Harwood), worth £300 million (\$549 million) and \$100 million; advising on the formation, and issue and listing of £30 million-worth of shares on the London Stock Exchange of Japanese Accelerated Performance Fund Ltd, a closed-ended investment fund; and acting for the liquidators in various cases, including the liquidation of a number of Guernsey companies in the Flightlease Group (part of Swissair).

Ozannes also counts a number of city and Jersey firms among its clients, offering Guernsey legal advice in all practice areas, with recent instructions coming from the likes of Allen & Overy, Stephenson Harwood, Dickson Minto, and CMS Cameron McKenna.

Partner Peter Harwood, head of the Guernsey Bar Council, is highly respected in the market, which describes him as both "good to deal with" and "commercial". He and David Moore are "the two who stand out" at the firm, with Moore described as an able, hard-working lawyer with "many strings to his bow". New partner Gavin Farrell is also attracting a great deal of praise as a rising star in the commercial sphere.

Key contact partners

Gavin Farrell
Peter Harwood
David Moore
Jeremy Wessels

Leading lawyers

Peter Harwood
David Moore

Babbe Le Pelley Tostevin

Nine-partner firm Babbe Le Pelley Tostevin is a medium-sized Guernsey firm that offers advice in all areas of corporate law, with a particular focus on commercial, trusts and insolvency. The firm is a member of Mackrell International, an international association of independent law firms, and has also forged an association with top-tier Jersey firm Bedell Cristin to provide a full Channel Islands service.

Over the past 12 months, the firm has provided advice on the public to private offer for Guiton Group Limited, the merger of Credit Lyonnais and Credit Agricole, and a £1.6 billion (\$2.9 billion) bond issue by Old Mutual. It continues to provide advice on the ongoing merger of Bank of America and Fleet Boston. Additional clients of the firm include the Swiss Federal Banking Commission, Condor Group Limited, Saffery Champness Limited and HSBC Bank. Mark Helyar is recommended by the market as a rising star, and is described by his peers as “showing promise” and “one to watch for the future”.

Key contact partners

Mark Helyar
Simon Howitt

Collas Day

Collas Day advises in all areas of corporate and commercial law, but with a particular emphasis on its banking practice. Although the firm has lost various advocates over the past couple of years, it has recently added three partners, two through internal promotion and one through the takeover of another Guernsey firm, Winter Palmer & Denziloe. The banking and corporate practice has also been strengthened by the addition of associate Sally Ross-Basinger from Clifford Chance.

The firm has acted in some capacity in almost all the property lending associated with the new construction that is ongoing on the island, and its client list includes lending institutions, financiers and borrowers. Recent deals have included advice on various financings to Royal Bank of Scotland, advising William Hill on the legal and regulatory aspects of its flotation under Guernsey law, and Friends Provident on the demutualization and transfer of business of Friends Provident Life Office to Friends Provident Life & Pensions.

Ian Kirk is highly rated in the market, described as a “very able commercial lawyer” and “down to earth” by his peers. Sean Cheong, a partner at the firm since 2001, is also recommended for her corporate and banking practice.

Key contact partners

Chris Bound
Sean Cheong
Ian Kirk

Leading lawyers

Sean Cheong
Ian Kirk

Ogier & Le Masurier

Originally a Jersey firm, Ogier opened its Guernsey office in 1998, under the management of partner Roger Le Tissier. The Guernsey firm now has a staff of 24, including two partners, after William Simpson joined from Ozannes in 2002, and offers advice in investment funds, banking and finance, trust company, regulatory issues and general commercial law.

Recent deals have included acting (with Jones Day) for Dexion Absolute Limited on a £64 million (\$117 million) share issue, advising (with Clifford Chance) GE Mortgage Insurance on the acquisition of Barclays mortgage indemnity captive, and providing advice to Marconi on the instructions of Allen & Overy in relation to all the Guernsey legal issues of Marconi’s scheme of arrangement and recapitalization. The firm was also involved in the state of Guernsey’s acquisition of local airline Aurigny.

Partner William Simpson is rated highly by his peers for his advice in all commercial areas, who say his recruitment from Ozannes “really enhanced Ogier’s reputation”. Ogier does draw criticism from the market for its lack of litigation capacity, which is seen to damage the firm’s practice. But Ogier does have plans to fill that gap, which should further strengthen its position in Guernsey.

Key contact partners

Roger Le Tissier
William Simpson

Leading lawyer

William Simpson

Other firms

Although neither firm makes it into the rankings, both **Wedlake Bell** and **Ashton & Allen** warrant a mention. Wedlake Bell is a firm of English solicitors, rather than Guernsey advocates, and is therefore not in a position to offer Guernsey law advice. Nevertheless, it was a good reputation on the island, and has good relationships with local companies.

Ashton & Allen is a new firm, set up by Raymond Ashton (formerly of Carey Langlois, now Carey Olsen) and Pauline Allen (formerly of Collas Day). It does not offer a general commercial service, but its tax and trusts expertise draws favourable comment from the market. Raymond Ashton, in particular, is highly respected for his tax expertise, and is described as “a very able guy” with “a very big tax reputation”.