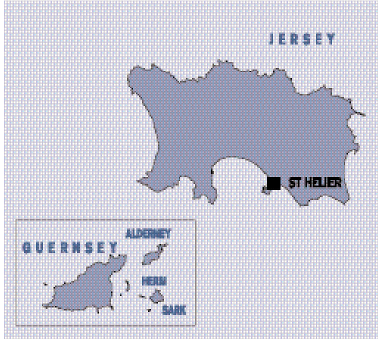
Jersey

Chamber of commerce:
Jersey Chamber of Commerce and Industry
19 Royal Square
St Helier JE1 4HF
Jersey
Tel: +44 1534 724 536
Fax: +44 1534 734 942
Email:
admin@jersey-chamber.co.uk

Professional body:
The Law Society of Jersey
22 Grenville Street
St Helier, JE4 8PX
Jersey
Tel: +44 1534 609 000
Fax: +44 1534 609 333



Jersey's corporate finance regime

Marc Yates
Ogier & Le Masurier
St Helier

For many years, Jersey has offered a flexible legal and regulatory framework to provide corporate finance solutions.

Exempt companies have provided the backbone of many tax-neutral structures and the benefit of no stamp duty on share capital or transfers, a friendly regulatory regime and the ability to raise and repay capital by issuing and redeeming redeemable shares, has earned Jersey the reputation of a can do jurisdiction for raising finance offshore.

Jersey is a jurisdiction that is politically stable (in 2004 Jersey celebrated 800 years since England granted it self-governing rights) and has a commercial legislative structure modelled on those of internationally recognized principles of English law, making it a finance centre with an environment ideal for international corporations. It is also home to a growing number of Jersey incorporated trading companies listed on international stock exchanges, including London, New York and Luxembourg, proving the high regard and status that Jersey has attained.

With this status, Jersey has been affected by the numerous international initiatives of the OECD, FATF and EU over recent years. In response to these initiatives, Jersey either has easily been able to comply with the new international standards (because of compliant existing legislation or by slightly modifying the same) or has reacted positively to the changes affecting both onshore and offshore counterparts alike.

Following the commitment of the UK government to the EU Savings Tax Directive, and with Jersey and the other Channel Islands not being members of the EU, the Jersey government announced, after lengthy negotiations, that it would implement equivalent measures to the EU Savings Tax Directive (the Directive), along with the EU member states, with effect from January 1 2005. However this agreement is conditional upon all EU member states, other named states (Switzerland, San Marino, Monaco, Andorra and Liechtenstein) and all associated and dependent territories of those EU member states (which for the UK includes the other Channel Islands, the Isle of Man and dependant or associated territories in the Caribbean) implementing the Directive as well.

If or when the Jersey legislation is implemented, the Directive will require that the details of interest payments made by a Jersey paying agent be disclosed to the tax authorities of another EU member state in respect of payments made to individuals resident within that EU member state.

In the area of corporate finance, because the Directive will apply only to individuals and not companies, it is likely to be of limited effect as far as Jersey is concerned.

On the corporate legislative front, changes introduced by an amendment to the Companies (Jersey) Law in late 2002 have created greater flexibility in the types of corporate entity possible under the law. In addition to par value and no-par-value companies, companies limited by guarantee and unlimited companies are now possible, as well as certain hybrids with elements of each. With the benefit of the new amendments, the return of share capital is made easier by the use of no-par-value shares (one of the favoured routes for so-called cash box companies) and by the reduction of share capital without court approval by the use of unlimited companies to generate distributable reserves.

The same amendment to the Companies Law also made changes to the rules relating to giving financial assistance, as well as providing the frameworks to migrate and merge companies. In respect of financial assistance, it is now a more straightforward procedure to authorize financial assistance, an important consideration in connection with financing mergers and acquisitions, and, subject to certain solvency tests, only a two-thirds majority resolution of the shareholders of the immediate holding company is required.

Under the new migration of companies provisions, if another jurisdiction recognizes the concept of continuance of companies as companies incorporated under another law, companies may be migrated both to and from Jersey. Generally speaking, subject to shareholder approval and notification of creditors, no approval is required from the Jersey court. Similarly, merger between Jersey companies is possible with only the approval of the Jersey Financial Services Commission. The ability to use these procedures has already been taken up on numerous occasions by groups of companies, often formed as a result of previous acquisitions, to create a simplified group structure without disturbing the underlying business of each of the group's component parts.

Jersey has a long history of finding ways of providing solutions to companies when it comes to raising finance. With the flexibility and choice of a number of structures available, new methods are being developed all the time. An example of this is the issue of debt securities by a limited partnership to raise tier-1 capital. The reputation of Jersey to do this is likely to continue as the need for sophisticated financial products by companies all around the world continues.

Corporate and commercial

Recommended firms
Bedell Cristin
Carey Olsen
Mourant du Feu & Jeune
Ogier & Le Masurier
Bailhache Labesse
Voisin & Co
Crills Advocates

Bedell Cristin

Bedell Cristin maintains its position in the top tier of Jersey's law firms, mainly as a result of its strong banking and structured finance practices, although the firm also offers advice in corporate, commercial and investment funds work.

The banking practice, led by highly rated partner Peter Byrne, has had another strong year. The firm advised The Royal Bank of Scotland International Limited (RBSI), as arranger, agent and lender, and Britannia Building Society as lender, in relation to the financing of the £20 million ($36 million) acquisition of HSBC House in St Helier, the largest bank-financed commercial property transaction undertaken to date in Jersey. Other deals included: advising MAN Group Plc in relation to a £350 million convertible bond issue; advising Sumitomo Mitsui Banking Corporation on a corporate restructuring and the related transfer of an aircraft financing portfolio; and advising Alestra (Mexico's leading telecommunications services provider) on its exchange/cash tender offer in respect of senior step-up notes. The department maintains strong links with banks in Jersey, notably RBSI, Deutsche Bank and Barclays Bank, and is also instructed by many city law firms on behalf of their banking and corporate clients, including Allen & Overy and DLA.

It has also been a good year for the structured finance group, led by Richard Gerwat. The team's big deal was for Lloyds TSB Bank, establishing its $8 billion commercial paper conduit, Cancara. The group also acted as Jersey counsel to KBC Bank on three synthetic CDO securitizations arranged by KBC Financial Products, and to DZ Bank in the establishment of its $10 billion conduit structure. In addition, there has been considerable activity in the UK credit card securitization sector, where Bedell Cristin has acted for (among others) MBNA, Barclaycard, Capital One, and Egg.

Activity in the corporate and commercial sector has included advice to Highland Gold Mining Limited on its placing and AIM listing, CI Traders on its merger and AIM listing, Claverley Company on its recommended takeover offer for The Guiton Group, and Hermes Private Equity, the equity finance providers, in the £50 million leveraged management buyout of the Walbrook Group.

The rating of the firm by the market remains high. Both Peter Byrne and Richard Gerwat are recommended, and are described as having "very good reputations". Shane Hollywood has "a safe pair of hands" and is recommended by many as a rising star. Certain reservations have been expressed regarding the firm's investment funds practice, due to the move of the highly rated Simon Howard to Bailhache Labesse. Bedell Cristin has, however, promoted partner Martin Paul to head up the funds department, and will be hoping that he and the other funds partners can alter this perception.

Key contact partners
Edward Bennett
Peter Byrne
Richard Gerwat
Shane Hollywood
Martin Paul
Michael Richardson

Leading lawyers
Peter Byrne
Richard Gerwat

Carey Olsen

Carey Olsen was formed by the merger of Jersey firm Olsens with Guernsey firm Carey Langlois in February 2003, putting the new firm in the happy position of being able to offer advice in both jurisdictions. It also has a London office, run by partner Fiona Fleming, to provide a more accessible service to its UK clients. In Jersey, the firm offers advice in all areas of corporate law, including mergers and acquisitions, securitization and structured finance, general banking, and investment funds.

The banking team's clients in Jersey include Bank of Scotland, BNP Paribas, HSBC, RBSI, Royal Bank of Canada, ABN AMRO, BBVA, and Deutsche Bank. The group's non-contentious work is split between a transactional team and a relationship team (which provides ongoing advice to the banks, most of which do not have an in-house legal team), the latter being Carey Olsen's focus.

The corporate and commercial team has seen an increase in its volume of work over the last year. Deals included: advising the Bank of Scotland on debt financing the management buyout of the Walbrook Group; acting for Warner Estate Holdings on refinancings and joint ventures relating to property portfolios valued at over £600 million ($1.1 billion); advising the family shareholders of The Guiton Group on selling their interest to Claverley Company; and acting in relation to the acquisition, restructuring and disposal of Marks & Spencer's head office in the UK. Many of these deals were on the instructions of the city firms that Carey Olsen counts among its referral network, which includes Clifford Chance, Freshfields, Linklaters, DLA and SJ Berwin.

The structured finance team made a high-profile recruitment this year, securitization and general capital markets specialist Alan Stevens, from Linklaters. Also, Tony Hillman (previously a partner at rival Jersey firm Crills) has been taken on by Carey Olsen as a consultant, and has brought various colleagues from his former firm with him. The group had an active year on the deals front, acting for Deutsche Bank on its securitization of a private equity investment portfolio, establishing Jersey special purpose vehicles for HBOS Treasury Services plc in its €14 billion ($16.9 billion) covered bond programme, and advising on the securitizations of portfolios of commercial mortgages by Real Estate Capital Limited, MABLE Commercial Funding Limited, and Swedish mortgage provider SBAB. The team has also advised White Pine Corporation Limited on the issue of capital notes, US medium-term notes and US commercial paper in a deal worth $22 billion, as well as advising on the Jersey element of various Morgan Stanley securitizations.

In both the corporate field and in securitization, market perception is that the "very enthusiastic" Alex Ohlsson is the key figure in Carey Olsen's practice, and he is described as "the dynamic influence in the commercial group". He is rated as being not just technically very good, but also commercially aware, and is recommended throughout the market. The general view is that it is too early to tell the effect that Alan Stevens will have on the practice, though he obviously brings a considerable reputation with him.

Key contact partners
Nicholas Crocker
Alex Ohlsson
Edward Quinn
Alan Stevens

Leading lawyer
Alex Ohlsson

Mourant du Feu & Jeune

Mourant's structured finance and securitization practice continues to go from strength to strength. This, along with the firm's general capital markets and corporate expertise, means there is no danger of the firm slipping down the rankings. Some feedback from the market even suggested that, although the top four firms should be bracketed together, Mourant is number one within the top tier.

The securitization team has an impressive deal list. In addition to advising on several issues under a master trust structure for the securitization of mortgages originated by Northern Rock, the team has advised clients such as Matlock Bank Limited (trading as the London Mortgage Company) on the issue of £176.8 million ($320.5 million) mortgage-backed floating rate notes in connection with the securitization of a portfolio of mortgage and secured personal loan receivables (as well as on two warehouse facilities to fund the receivables before securitization), Lehman Brothers and Deutsche International Trust Corporation (CI) Limited as trustees of the Eiger Trust, on the issue of €677.5 million ($817.5 million) floating rate certificates and $25 million floating rate certificates in connection with a securitization of Swiss commercial properties, and Base Metals Finance Company Limited on its entry into a $750 million securitization programme, backed by metal inventories originating from Glencore International. There have also been continuing deals under existing structures, such as for Halifax under a trust structure with Permanent Mortgages Trustee Limited, a Jersey special purpose vehicle (SPV).

Mourant has also been active in the wider structured finance market, including advising the World Gold Council and gold bullion experts Investor Resources Limited in relation to an innovative new structure designed to revitalize the public's interest in gold. The product involves the issue of securities carrying the beneficial entitlement to the gold, and listed in London (traded on CREST). The firm has been advising on many CDOs (both synthetic and non-synthetic), including a transaction by Tacana Company Limited in which $48.6 million of notes were issued, with the proceeds invested in underlying securities and a portfolio of credit default swaps, a €1 billion synthetic CDO transaction arranged by Citibank and managed by AXA Investment Managers Paris, and advising CSFB and Claudius Limited in relation to the issue of $164 million leveraged credit risk notes linked to a dynamic portfolio of credit default swaps.

The firm also acted for several large investment banks in setting up a number of new SPVs in connection with repackaging transactions, the SPVs issuing a variety of securities including credit-linked notes, preference shares and warrants. Mourant acted for SPVs issuing debt arranged by, among others, JP Morgan, CSFB, ABN AMRO, Bayerische Hypo- und Vereinsbank, The Royal Bank of Scotland, Deutsche Bank, Lehman Brothers International, Commerzbank and Salomon Smith Barney.

Mourant was also instructed in the high-profile Drax restructuring. The firm was the only Jersey law firm involved, with five separate Mourant teams retained to advise on all Jersey law aspects of the transaction by the various transaction counsel, including instructions from Allen & Overy to act for the bank steering committee, Norton Rose to represent Drax's interests and the Jersey issuer of the restructuring notes, and Slaughter and May to assist with the representation of the Jersey financing vehicles.

In debt- and equity-linked work, Mourant has also had a great year. To give just a few examples, the firm advised on the issue of £300 million guaranteed convertible bonds by Hilton Group Finance (Jersey) Limited (guaranteed by Hilton Group), the establishment of a $10 billion secured transaction programme for Société Générale, under which several transactions have now been completed, the issue of €243 million bonds convertible into exchangeable redeemable preference shares of EMI Group plc, and acted for Irish-listed company Greencore Group on its US private placement of notes issued by its wholly owned Jersey subsidiary, which raised approximately $300 million. Tier 1 work has included acting in a $1.25 billion limited partnership capital raising for HSBC Holdings, raising $1 billion Tier 1 and Tier 2 capital for HBOS through a Jersey limited partnership, and the establishment of and issue by a Jersey company of €100 million preferred securities to raise Tier 1 capital for Raiffeisen Zentralbank Osterreich.

Corporate work has included advising UBS Capital (Jersey) Limited as selling shareholders in the public offering of Wolfson Microelectronics, advising on setting up the vehicle for the consortium providing equity funding to the successful bid for Debenhams, advising Coutts & Co on the merger of two of its subsidiary companies, including redomiciling the Guernsey company to Jersey, and advising Standard Bank Offshore Group on a complex merger involving 40 corporate structures in three jurisdictions.

Reflecting Mourant's position of strength in the market, many of its lawyers come in for high praise from their peers. Ian James, Mourant's senior partner, is universally recommended and is described as having "a first-class reputation". Jacqueline Richomme, too, is widely praised, and Tim Herbert and Edward Devenport are recommended on the corporate side. Three of Mourant's younger lawyers also deserve a mention as rising stars: Robert Hickling, a partner since 2000, the "very sound" Jonathan Rigby, a partner since 2003 and head of Mourant's city office, and Ben Robins, a partner since 2002, who is described as "very bright" and about whom much is being heard in the market.

Key contact partners

Edward Devenport
Robert Hickling
Alastair Syvret

Leading lawyers

Edward Devenport
Tim Herbert
Ian James
Jacqueline Richomme

Ogier & Le Masurier

Ogier & Le Masurier continues to build its reputation as a top-tier Jersey law firm, and covers all areas of financial law, including capital markets, structured finance and securitization, corporate and commercial, and investment funds. Six years ago, Ogier was the first Jersey firm to open a Guernsey office, and Ogier is continuing its policy of expansion though through recruitment to its Channel Islands offices and, more recently, through its merger with Boxalls in the Cayman Islands, forming new Cayman Islands firm Ogier & Boxalls, the first merger of its kind. Ogier now has the capacity to provide advice in three offshore jurisdictions, as well as from its London office (opened in April 2003).

The banking department at Ogier, run by the "very well-established" and highly rated Matthew Swan before his move to the Cayman Islands, and now under the leadership of Marc Yates, provides both local and international advice to a variety of clients. Deals over the last year include acting for Royal Bank of Scotland International on financing a large development of the Waterfront site in St Helier, advising Alpha Bank AE on a complex €200 million ($241 million) hybrid securities issue, and advising a group of banks on enforcing their security over the majority holding in the Formula 1 business, after the collapse of the Kirch media empire.

The structured finance group, led by Chris Byrne, has seen an increase in business over the last year, including numerous Jersey limited partnership transactions arranged by HSBC in Hong Kong, numerous cashbox placing transactions, as well as advising on deferred equity structures for a variety of clients.

Meanwhile, the securitization team (separate from the structured finance team, but also under the leadership of Chris Byrne) has also had a strong year. The group has advised on a large number of asset-backed commercial paper issuance and structured investment vehicles, including Foxboro Funding, arranged by Lehman Brothers, Ticonderoga and Indomitable, two $5 billion commercial paper issues arranged by Bank of America, and Grampian Funding, run by HBOS, which increased its programme to $20 billion. Ogier has also acted on a number of CDO transactions, arranged by Merrill Lynch, JP Morgan and Morgan Stanley. The group has a strong practice in German deals, such as Deco Series 2003 – Centro Limited, a German commercial property securitization arranged by Deutsche Bank. Other deals include instructions received from Cadwalader Wickersham & Taft on Rhein-Main Securitization Limited and Rhein-Gold Securitization Limited (each worth €3.5 billion), Weil Gotshal & Manges on Harbourmaster CLO3 Limited, with a transactional value of €438 million, Linklaters Paris on Chrome Funding Limited and Nickel Funding Limited, valued at €5 billion, and Ashurst on Lafayette Sovereign CDO 1 Limited, worth $216.6 million.

On the corporate side, Ogier acted as Jersey counsel to Randgold Resources Limited, a London and Nasdaq-listed FTSE 250 company with southern African gold mining interests, on various matters, including its attempted takeover of Ashanti Gold. The corporate group also acted for Westmount Energy Limited in the sale of its 20% holding in Fusion Oil & Gas to Sterling Energy, advised Sun Interbrew on its £38 million ($70 million) rights issue, and HSBC Bank Middle East on the redomiciliation into Jersey of a bank incorporated in England.

In addition to the highly recommended Chris Byrne, the market has good things to say about Michael Lombardi and Nick Kershaw, both of whom are well regarded by their peers.

Key contact partners
Chris Byrne
Marc Yates

Leading lawyers
Chris Byrne
Nick Kershaw
Michael Lombardi

Bailhache Labesse

Bailhache Labesse had a noted success in the recruitment market this year, bringing highly rated funds lawyer Simon Howard over from Bedell Cristin as a consultant. The general view in the market is that it is too soon to know the impact this move will have on both firms, but it certainly indicates Bailhache's ambition to increase its profile and break into the international finance market. Accordingly, although Bailhache remains in the second tier this year, it certainly seems to be the firm to watch.

On the corporate side, the firm has been involved both in international and local deals. The highlight of the year was acting for EM.TV on the $1.7 billion restructuring of the Formula 1 group of companies after the insolvency of Kirsch Media, working with Clifford Chance. The firm also advised Ann Street Group on its £200 million merger with CI Traders Group, the largest merger to date of local Jersey retail groups, and Oaktree Investments on its acquisition by Rathbones.

In banking, the firm worked alongside Lovells for Barclays Group in the reorganization of Barclays' offshore business, a deal involving the transfer of over £10 billion of assets. The firm also provides banking advice to Standard Chartered Grindlays, SG Hambros and Nationwide.

The firm has also been considerably active on capital markets deals, representing Nationwide on its establishment of US and European asset-backed commercial paper programmes (to an initial limit of $2 billion), Asset Backed Capital Limited on restructuring insurance wrapped notes in default, Noble Fund Managers Limited on setting up a venture capital fund, and Aberdeen Asset Management on the restructuring and liquidation of offshore split capital funds worth £500 million.

Key contact partner
Wendy Benjamin
John Bisson
Simon Howard
Mark Lewis

Leading lawyer
Simon Howard

Voisin & Co

Seven-partner firm Voisin & Co offers advice in all areas of financial law, including banking, capital markets, and securitization, with a particular focus on company and commercial law, as well as having expertise in regulatory work, and has a consistent, strong reputation in the market. The firm does its largest deals in the investment funds sector and in capital markets (particularly Australian), and also has a large Islamic financial base.

In the corporate and commercial field, deals have included the first mergers to take place under Jersey's new merger regime, with AITC (Nominees) Limited merging with

Worthy Nominees Limited to create AIBWT Nominees Limited, and AIB Trust Company (Jersey) Limited, Worthy Trust Company Limited, Worthy Secretaries Limited and Worthy Securities Limited merging to form AIBWorthytrust Limited. Voisin has also advised on the redomiciliation of companies from Jersey to various jurisdictions, including the British Virgin Islands, Delaware, Luxembourg and Guernsey. Mergers and acquisitions activity has included advising Andy Ruhan, a UK property entrepreneur, on the acquisition of a portfolio of 37 Thistle hotels, as well as on subsequent corporate restructurings. The firm also advises on insolvency, including acting for the insolvency administrator of the Kirch Media group in respect of its Jersey-incorporated companies.

In structured finance and securitization, Voisin has progressed its relationship with a number of Gulf Cooperation Council investment clients, and has advised on the development of a number of structured finance vehicles for a variety of gulf and worldwide investors, in particular helping to develop securitizations. The firm has also advised on a number of capital markets and repackaging transactions, as well as continuing to advise on the medium-term note programmes for the credit card receivables of American Express. Securitization work has included advice to utility companies, and Voisin has also advised a number of international banks in relation to Tier 1 and other capital markets structures. Clients of the firm include Australia and New Zealand Banking Group Limited, UBS Warburg (Sydney), and RaboBank Group.

Key contacts
Bill Gibbon
Ian Strang

Crills Advocates

The consensus in the market is that Crills has slipped slightly following the loss of Tony Hillman and other members of the finance team to Carey Olsen. Crills is, however, looking to remedy this loss with its recent rebranding and recruitment drive, so its move down may be short-lived.

The firm's financial services business department offers advice on a full range of offshore corporate and trust work, with a particular emphasis on structured finance. Recent transactions have included acting for a large UK bank on the provision of a £103 million ($191 million) loan facility for the purchase of a property portfolio, the redomiciliation of a major UK property fund, advising on the provision of finance for the purchase of a London shopping centre, and advising on the sale and leaseback of jet aircraft. The firm also offers specialist e-business advice, and continues to bolster this area of expertise with further recruitment. Crills is also a founder and continuing member of Globalaw, an international network of commercial law firms.

Key contact partner
Peter Harris

Other firms

Crill Canavan, **Le Gallais & Luce** and **Viberts** all offer corporate and commercial advice, but the view of the market is that they are rarely seen on the large deals. Of the three, Viberts is seen as the most ambitious, and the most likely to get a foot in the door in the future.