

WRITTEN BY CHRISTOPHER JONES

GUERNSEY — STAYING AHEAD OF THE GAME

19 SEPTEMBER 2015

The last 12 months have been a period of change for Guernsey. The island has seen a number of changes come into force and the announcement of many key proposals for future change. Ogier Partner Christopher Jones looks at these in a little more detail.

The last twelve months have been a period of change for Guernsey. The island has seen a number of changes come into force and the announcement of many key proposals for future change. The theme of these changes is to position the Bailiwick of Guernsey as a destination of choice for international financial business both now and for generations to come, and to enhance the sustainability and attractiveness of Guernsey as a truly international and innovative finance centre. A number of these changes are discussed below.

Investment funds sector goes from strength to strength

2014 started well with the announcement that Guernsey had retained its position of having more non-UK entities listed on the London Stock Exchange (LSE), whether the main market, alternative investment market or specialist fund market, than any other jurisdiction. In addition, over the course of the year, 137 new funds were established in Guernsey, 13 of which were listed on the LSE. This allowed the island to retain its position as leader of non-UK listed entities on the LSE as at January 2015.

Guernsey's prominence in the investment funds sector is attributable to several factors. Its regulatory flexibility and legislative responsiveness allow Guernsey to deal effectively with market pressures. It maintains a high-quality, transparent regulatory system of supervision and benefits from a sophisticated professional infrastructure. Guernsey continues to adopt international protocols on money laundering and to conclude tax information exchange agreements at an early stage to maintain its reputation as a compliant, quality jurisdiction in which to do business.

More specifically, Guernsey's proactive response to the Alternative Investment Fund Manager's Directive (AIFMD) has continued to attract new funds to the island. Under the Guernsey dual regime, Guernsey funds can continue to receive investment from appropriately qualified investors in EU/EEA countries subject to compliance with existing national private placement arrangements (Guernsey has signed 27 bilateral cooperation agreements in this regard). Alternatively, Guernsey fund managers can opt in to a fully AIFMD compliant regime. Guernsey has received praise from professionals within the industry for the functionality of the dual regime and the efficiency of the regulator. The website of the Guernsey Financial Services Commission contains a list of frequently asked questions in respect of AIFMD and Guernsey funds.

Efficient and responsive future for financial and regulatory laws

Plans for legislative reform of key regulatory and supervisory laws in the Bailiwick are progressing with the publication of a consultation paper (April 2015) seeking feedback from the financial services industry on a number of proposed amendments to update current legislation. The proposals are designed to ensure that Guernsey preserves its compliance with relevant international standards and evolves in line with such standards efficiently and with clarity. The proposed amendments remove inconsistencies between certain regulatory laws, streamline definitions, enhance clarity and create efficiencies in the operating procedures of Guernsey's supervisory bodies.

Introducing the Financial Ombudsman

On 1 June 2015, Guernsey will welcome Douglas Melville as the newly appointed inaugural Financial Services Ombudsman for Guernsey. Mr Melville is currently the Canadian Ombudsman for Banking Services and Investments and, once the Ombudsman scheme is up and running, will adjudicate complaints from individual customers and small businesses in relation to financial services provided from within the Bailiwick. The Ombudsman may require that the financial services business compensate the complainant for their financial loss and any material distress or inconvenience, and/or require the financial services business to take such steps as the Ombudsman considers fair and reasonable. The maximum amount that the Ombudsman can award will be

£150,000.

Insolvency reform

Legislative change is also underway in the area of Guernsey insolvency law. A consultation paper was published in October seeking responses by the end of 2014. The suggested reforms are in respect of both personal and corporate insolvency. Some of these changes are purely legislative; translating into law what currently happens in practice. Other proposals include introducing a proof of debt procedure, prioritisation of secured creditor claims, dealing with un-liquidated claims, applying insolvency set off and extending Guernsey's claw back provisions.

M&A activity

The M&A sector in Guernsey has been buoyant over the last 18 months. For example, the sector has seen a number of high profile schemes of arrangement, including the scheme used in the £5.6 billion acquisition of Friends Life Group by Aviva plc. This activity demonstrates the willingness of the Guernsey courts to take a flexible, yet (to English and Commonwealth practitioners) relatively familiar approach to provide a sensible and fair outcome for those involved in such schemes.

Guernsey welcomes FirstRand

In October 2014, Guernsey granted a banking licence to FirstRand, South Africa's largest bank by market capitalisation. FirstRand's new branch will open in Guernsey in 2015, bringing the total number of licensed banks in Guernsey to 31 and boosting the value of banking deposits in the island. The value of deposits held by Guernsey banks grew by 3.5 per cent in the final quarter of 2014, bringing total bank deposits in the island to £83.7 billion as at December 2014.

Additional structuring options

In May 2014, the law providing for limited liability partnerships (LLPs) came into force. Applications to form LLPs are now being accepted by the Registrar of Limited Liability Partnerships for a fee of £100. LLPs combine the flexible features of general partnerships with the benefit of limited liability for their members. Their introduction has been met with a positive response from professionals in jurisdictions in which LLPs are already a common feature. As Guernsey has had the ability to review and learn from those jurisdictions, it is anticipated that Guernsey's LLP legislation will be usefully applied in a variety of commercial contexts, providing additional structuring options. In addition, the Guernsey LLP law provides for the migration of LLPs into, and out of, the island and for the conversion of general partnerships into LLPs.

The creation of Guernsey LLPs follows the introduction of foundations in 2013 which have proved popular vehicles, particularly with those with a civil law background, for philanthropic as well as private ventures.

Captive hat-trick

Earlier this year, Guernsey was crowned European domicile of the year for the third successive year at the UK Captive Services Awards 2015 in recognition of its innovative approach and first-class delivery and management of captive insurance.

Aircraft registration

Guernsey launched an aircraft registry in October last year. Pursuant to the Aviation Registry (Guernsey) Law, 2013, private and corporate aircraft, and aircraft engines, can be registered on the island's new registry '2-REG'. There are no restrictions in terms of where the aircraft may be located, but aircraft in current commercial use (ie, in operation involving the transport of passengers, cargo or mail for remuneration or hire) are not eligible for registration. A publically searchable charges register allows interests in aircraft or engines to be registered. Subject to ratification by the UK, and extension to Guernsey, the Cape Town Convention on International Interests in Mobile Equipment and the Protocol to the Cape Town Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment will apply in Guernsey. The Convention and Protocol seek to standardise transactions involving movable property, create international standards for registration of ownership and security interests, and create legal remedies for default in financing agreements. It is anticipated that the application of the Convention and Protocol will attract additional aircraft registrations in the jurisdiction.

International profile

Another 'first' for the island was achieved in April this year when Kate Clouston was appointed as the first Director of International Business Development for Guernsey Finance. Guernsey Finance is the promotional agency for the island's finance industry. The appointment is part of Guernsey Finance's ongoing efforts to promote Guernsey as an innovative international financial centre in new and developing geographical markets.

In October 2014, Guernsey once again sent a delegation of representatives to Hong Kong, Shanghai and Beijing to raise awareness of the island's private wealth and investment fund offerings with current and prospective

contacts in the region. Whilst in Beijing, representatives from the States of Guernsey signed a 'Statement of Cooperation' with the Beijing Municipal Bureau of Financial Work. The Statement provides for cooperation in promoting development and prosperity in both jurisdictions, with proposals for arranging exchange programs, training courses and educational workshops between the two regions.

Having signed the UK-Guernsey and US-Guernsey intergovernmental agreements in relation to the Foreign Account Tax Compliance Act (FATCA) in October and December 2013 respectively, procedures are well underway in Guernsey's finance industry to achieve FATCA compliance. Guernsey has already signified its intention to adopt the Common Reporting and Due Diligence Standard being developed by the Organisation for Economic Cooperation and Development.

In the last year Guernsey has signed three bilateral Double Taxation Arrangements (DTAs), meaning that it has now signed comprehensive DTAs with the following 13 jurisdictions: UK, Singapore, Malta, the Isle of Man, Jersey, Hong Kong, Monaco, Qatar, Luxembourg, Mauritius, Cyprus, Liechtenstein and the Seychelles. In addition, Guernsey is party to over 50 bilateral Tax Information Exchange Agreements, a full list of which can be accessed on the States of Guernsey website.

2015 and beyond

Guernsey is embracing change as it looks to secure its future as a leading international finance centre in what, at times, can be a challenging environment. Guernsey will continue to meet these challenges by providing an innovative business culture, responsive regulator, stable government and tax neutrality.

An original version of this article was published in [IFC Review](#) 2015, September 2015.

WE ARE GUERNSEY is the brand under which Guernsey Finance promotes the island's financial services sector internationally. Guernsey Finance - the promotional agency for the island's finance industry internationally - is a joint industry and Government initiative responsible for the promotion of Guernsey. Under the leadership of Chief Executive Rupert Pleasant, the agency ensures that the core values and competencies of the island's finance sector are accepted and respected by the global community and that financial business development flows are enhanced.

PO Box 655, St Peter Port,
Guernsey, GY1 3PN

+44 (0)1481 720071

INFO@WEAREGUERNSEY.COM

