

FINANCIAL NEWS

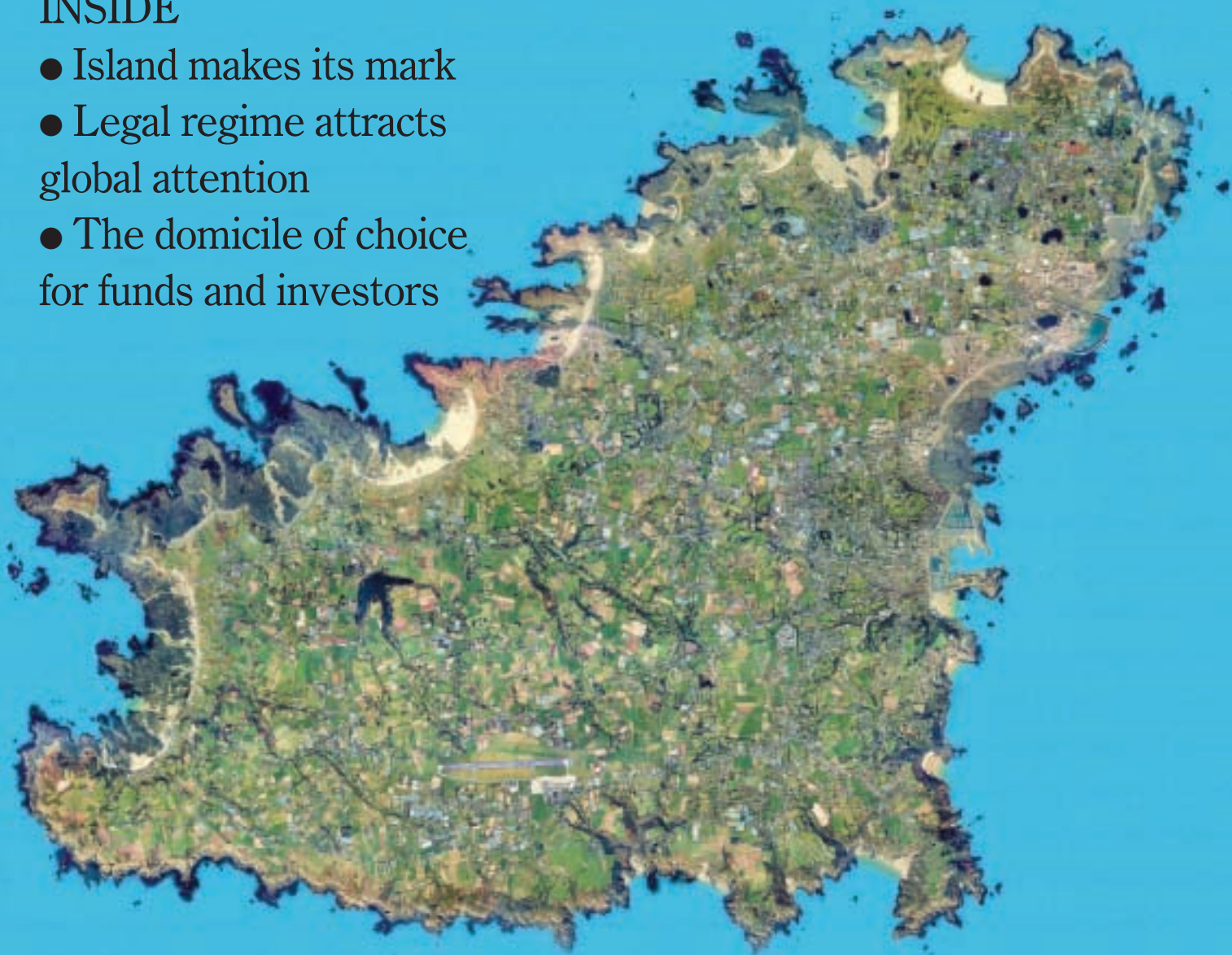
PRIVATE EQUITY NEWS

Guernsey:

Leading offshore centre

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ADVERTISING FEATURE

Guernsey makes its mark as a private equity-focused finance centre

Guernsey is a leading international finance centre with particular prowess in private equity. Over the last 50 years, the island has established a reputation for providing an extensive range of financial products and services across the globe to the highest international standards. In recent times we have seen tremendous growth particularly in our funds sector and more latterly in alternatives such as private equity. Our success is founded on the fact that the island's financial services heritage has helped build a wealth of expertise and first-class infrastructure which makes us very attractive for the domiciling, structuring, management, administration and custody of private equity funds.

G is for private equity

Since the inception of Guernsey's funds industry some half a century ago, there has been significant growth, particularly in the more immediate past. Total business on the island reached £207.2bn within 1,202 funds at the end of June – up 1.7% during the quarter and 33% year on year. We think our performance remains strong considering the world economic scene and it looks even more encouraging when you consider that some of our competitors such as Jersey saw a reduction in the value of their business during this last quarter.

In the last few years the island's funds industry has seen traditional funds increasingly complemented by a rise in alternatives, with hedge funds and funds of hedge funds worth £29.7bn and property funds worth £18bn at the end of June. The value of private equity funds under management and administration in Guernsey has risen 400% in the last four and a half years. During the second quarter of this year they increased by nearly £1bn (2.5%) to reach £36.2bn in some 226 funds at the end of June 2008. This is despite the difficult market conditions that have seen amounts raised by private equity firms across Europe fall by 10% this year.

Jon Moulton, founder and managing partner of Alchemy Partners, has said that Guernsey is "a terrific place in which to do business".

Menu of choice

Other leading private equity managers, such as CVC and BC Partners, also have the operation of their funds facilitated in the island. Our administrators can and do service non-Guernsey-based funds but a large

Peter Niven, chief executive of Guernsey Finance

proportion of their business relates to Guernsey open and closed-ended funds, which are now promoted and sponsored by leading institutions in 45 countries. These can be established through a range of flexible investment vehicles such as unit trusts, protected cell companies, incorporated cell companies and limited partnerships. There are a wide range of administrators on the island, many of which have specific expertise in, and bespoke IT systems for, administering private equity funds. These include dedicated private equity administrators such as IPES and Augentius, as well as global brands such as Northern Trust which have the capacity to act as administrators and/or custodians.

Indeed, Guernsey's funds industry can draw on the services provided by the 49 licensed banks on the island, which include some of the most famous names from around the world and between them have £128bn of deposits. Guernsey's funds industry can also call upon the island's wealth management sector, where there are 140 licensed fiduciaries, ranging from large organisations to boutique operations, holding between £250bn and £300bn worth of assets in trust; and the local risk management industry, which is renowned for making Guernsey the number one jurisdiction in Europe for captive insurance.

Well supported

In addition, the island's funds industry is supported by a comprehensive network of professional services such as investment, legal, tax, audit, accounting and actuarial advisers. This includes multi-jurisdictional law firms and the 'big four' accountancy firms, where there is specialist expertise in private equity. Guernsey is also home to the Channel Islands Stock Exchange, which has grown considerably since it was established in 1998 and now has more than 2,800 securities listed.

Island life facilitates a team spirit among these financial services businesses which work with the Guernsey Financial Services Commission to provide products and services at international standards. The GFSC's robust yet pragmatic approach to regulation has fostered a tradition of innovation, for example Guernsey pioneered the protected cell company in 1997. It has also been enterprising in its successful

introduction of qualified investor funds – a self-certification regime for funds targeting experienced investors – and the launch of a fast-track registered funds regime.

Guernsey has a skilled, experienced and highly motivated on-island workforce. In addition to in-house training, the finance industry provides professional development for its staff through the Guernsey Training Agency University Centre. Its work with the Institute of Directors ensures that the island has a pool of experienced and well-qualified non-executive directors. This has enhanced Guernsey's reputation for being not just well-regulated but also having strong standards of corporate governance.

Importantly, having a physical operation in Guernsey provides additional substance to offshore arrangements. World-renowned managers Terra Firma and Permira have established their own bases on the island.

This year Guernsey has enhanced its attractiveness by introducing a new companies law and an online Guernsey companies registry offering incorporations in 15 minutes and prices starting from £100. In addition, on January 1 this year, Guernsey moved to a zero rate of corporate tax as standard; there is still no withholding tax on dividends paid, no capital gains tax, no inheritance tax and no value-added or general sales tax, and personal income tax remains levied at a maximum of 20%.

The KKR effect

It could be argued that the listing of the \$5bn Guernsey limited partnership KKR Private Equity Investors on Euronext Amsterdam was so innovative that it has been the largest single contributor to the island's recent success in the asset class.

This highlighted that at the time Guernsey was one of the few jurisdictions from where funds wishing to list on Euronext did not need to obtain a licence in the Netherlands because the Dutch AFM had ruled that there was already adequate 'home' supervision.

It also put Guernsey on the map internationally, particularly in the US. From this point on the island has never looked back as it has become, in the words of Bridget Barker, partner at law firm Macfarlanes in London, "the jurisdiction of choice for private equity".

● **Guernsey Finance is the promotional agency for the island's finance industry.**
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Favourable legal regime attracts global attention

As the only jurisdiction in Europe aside from Scotland that allows a limited partnership to be recognised as a “legal personality”, Guernsey has become a favourite operating centre for funds of funds and secondary fund sponsors in particular.

Aside from the tax savings associated with all the offshore jurisdictions as base locations for private equity firms, this legal technicality has made Guernsey an attractive place for funds of funds to base.

Lewis Chong, counsel in the London office of law firm O’Melveny & Myers who was previously based in Guernsey, said: “Legal personality status helps because you have to disclose who all the partners are in an English limited partnership. If you have a separate legal personality registered in Guernsey, you only need to name that partnership.”

While not an issue for mainstream buyout or venture funds, this can be a determining factor for funds of funds.

The Guernsey Limited Partnership Act is better drafted than the UK equivalent, according to legal sources, and gives more clarity and certainty to investors in terms of what they can and cannot do with regard to their involvement in the fund. This makes the island attractive to lawyers advising on the launch of private equity funds.

In the UK, the 1907 Limited Partnership Act is sparsely drafted and in need of updating, sources said. Last month, the Department for Business Enterprise and Regulatory Reform issued a consultation document aimed at modernising and simplifying the law on limited partnerships, but for now the rules in Guernsey remain easier to follow, the sources added.

Up-to-date limited partner legislation ensures the dos and don’ts of investment are clear and certain, in contrast to the law in Britain, writes Claire Smith

James Ford, also counsel at O’Melveny & Myers in London, said: “In common with Cayman and Jersey, Guernsey has a prescriptive list of things that LPs can do without being considered to be involved in management, because being involved in management means fewer limits on personal liabilities.” The UK rules, by contrast, are much more open to interpretation, he said.

Duncan Woollard, a partner in law firm SJ Berwin’s London-based funds team, said: “Both Jersey and Guernsey have an advantage over the UK in that they can get legislative amendments made to their partnership acts and company laws swiftly and in a way that is friendly to an offshore fund manager.

“The UK has the 1907 Limited Partnerships Act, which has a few gaps in it, and it’s going to be a fair amount of time before anything happens to update that.”

However, some European fund managers have been dissuaded from a Guernsey fund structure because their investors can suffer tax disadvantages with offshore funds. Italy, Portugal and Spain, for example, do not afford tax exemptions to investors in countries which are defined as tax havens, such as Jersey, Guernsey, the Cayman Islands and the British Virgin Islands.

Woollard said: “The Italian authorities are among the most penal to tax haven-based structures, so we tend to avoid Jersey and Guernsey for an Italian fund.”

For funds seeking an offshore base, there is often little difference from a legal perspective between setting up in Jersey, Guernsey or Cayman. Ford explained: “There is very light regulation for pri-

vate equity-type funds in Caman, and so it is a lot quicker to set up there. However, Jersey and Guernsey’s tax structures tend to be easier to make robust, and some investors prefer a structure that is subject to a degree of regulation.”

When choosing between Jersey and Guernsey, however, most fund managers are driven by the availability of service providers such as lawyers and administrators. Both have introduced fast-track processes to get funds authorised in three to four days, involving administrators doing the bulk of the background checks that the regulator would historically have carried out, and then underwriting the authorisation.

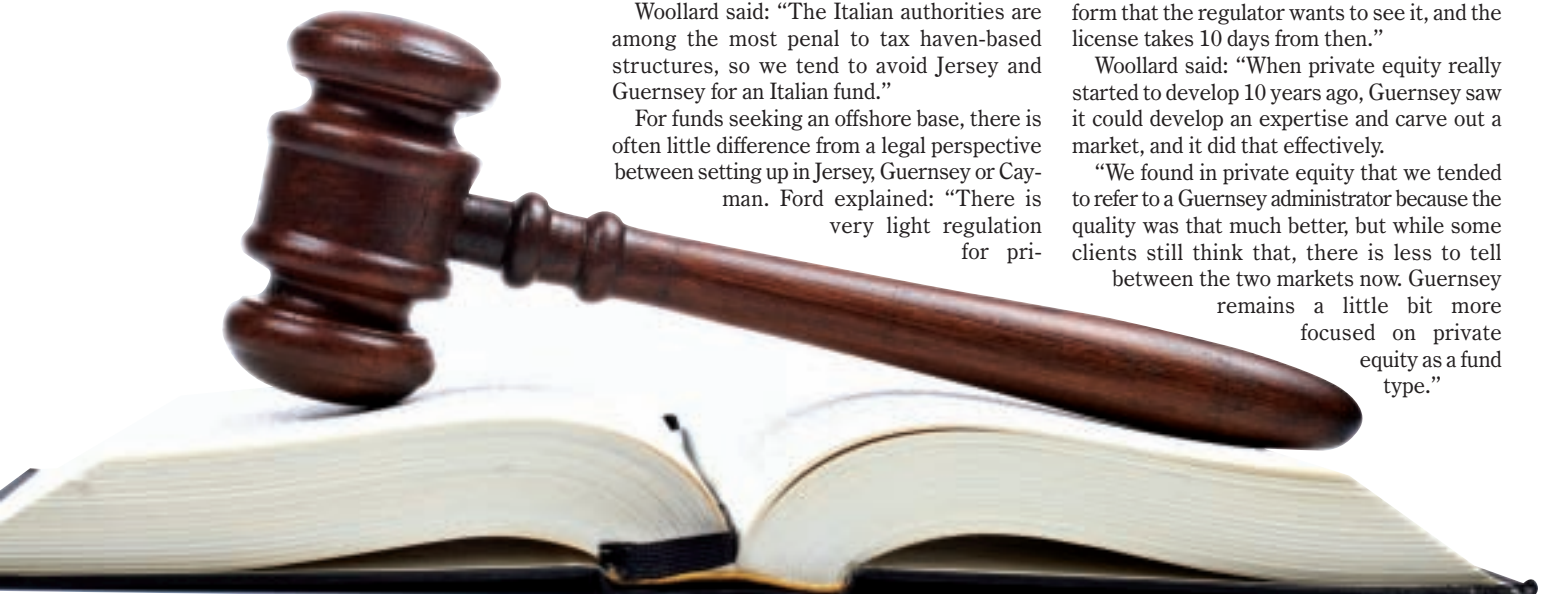
Competition between the two Channel Islands is fierce, and when one market introduces a new legal or regulatory procedure, it is quickly followed by the other.

An example is the licensing application procedure, which follows authorisation and can take as long as six weeks. Both markets are working to streamline that process to as little as 10 business days.

Ford said: “One of the things that throws people is a belief that if they come to us, they will be licensed 10 days later. But what takes time is getting the information together in the form that the regulator wants to see it, and the license takes 10 days from then.”

Woollard said: “When private equity really started to develop 10 years ago, Guernsey saw it could develop an expertise and carve out a market, and it did that effectively.

“We found in private equity that we tended to refer to a Guernsey administrator because the quality was that much better, but while some clients still think that, there is less to tell between the two markets now. Guernsey remains a little bit more focused on private equity as a fund type.”



ADVERTISING FEATURE

The domicile of choice for funds and investors

Guernsey has long been the domicile of choice for offshore private equity funds. The island has seen a considerable increase in the value of funds as a whole under administration in recent years, with the figure topping £207bn at the end of June – a 33% increase over the previous year. The number and value of closed-ended funds have grown at a similar pace.

Closed-ended funds, most of them private equity funds, now represent approximately 40% of the total assets under administration on the island. Guernsey, and the Guernsey Financial Services Commission as the regulator, have long been accommodating to the industry, ensuring that the correct legislation is in place and facilitating the type of structures used – primarily limited partnerships.

The competition between domiciles to secure new funds, albeit not always obvious, does exist. Guernsey continues to compete strongly with Jersey, Cayman and the more recent arrival on the private equity scene, Luxembourg.

The Guernsey laws regarding limited partnerships have been in place for many years – they are well tried and tested. In addition, Guernsey has worked hard to remove unnecessary time-consuming approval processes and, assuming that the administrator has been able to collect all the required information, an application for a registered fund (the category which most private equity funds fall into) now can be processed with 72 hours.

David Bailey, managing partner at Augustus Fund Administration, said: “Of all the different fund domiciles available to general partners and managers, it is Guernsey we see the most. It has a strong reputation among the private equity community and is well-respected for its level of regulation by limited partners. If a fund presents itself with a good track record and a Guernsey domicile it will attract the attention of potential investors.”

With its involvement with the private equity industry over many years, considerable expertise in the sector can be found on the island. Good legal advisers who have had years of private equity experience are readily available, as are specialist fund administrators. Similarly there is a good pool of non-executive directors who will guide and support the fund, ensuring that the interests of the investors are properly protected and that everything is carried out in accordance with the local requirements.

As in most offshore jurisdictions, each fund

**Barry Carroll, senior partner,
Augustus Fund Administration**

must receive approval from the regulator (Guernsey Financial Services Commission) before it can be launched. Guernsey has worked hard to ensure that this process is as quick and easy as possible for managers, whilst at the same time ensuring the appropriate levels of regulation and approval. It would be normal for this process to be project managed by the appointed fund administrator who will ensure that all the i's are dotted and the t's crossed before any application is submitted for approval.

Kerry-Anne Morley, managing director at Augustus Fund Administration, said: “We work with our clients throughout the launch, co-ordinating the process and ensuring everything is handled in a timely fashion. The regulator is seeking evidence on three counts: integrity, solvency and competence, and it is important all three are evidenced in depth and we work with our clients to ensure a full and detailed file is set up properly evidencing all the requirements.”

To evidence integrity, it is necessary to be able to provide evidence of the manager's reputation and standing within the industry as whole. For existing groups/managers this is normally fairly obvious and for new managers (spin-outs/start-ups) is normally achieved through records of previous employment including appropriate references from previous employers.

Evidence of solvency is generally

considered to be the previous running of a solvent business and the maintenance of funds to comply with capital adequacy requirements. For new groups which do not have a financial record it is necessary to prepare financial forecasts to provide evidence of a long-term financially viable business.

Finally, evidence of competence is best provided by a track record from either an existing business or similar business. Evidence of client complaints, in addition to investment performance, is the type of information that is taken into account. Where the investment manager is a new group, details of the previous records and experience of the individuals will be taken into account, along with the resources being recruited into the business and their skills, knowledge and experience.

By requiring detailed and proper due diligence on potential managers and funds, Guernsey has successfully ensured that fund products domiciled on the island are reputable products. Past reputation does not guarantee performance but the regulators along with industry have done as much as possible to ensure integrity of the product. In addition they have managed to achieve a regulatory process that doesn't get in the way of speedy fund launches. As a consequence Guernsey remains as the domicile of choice for the many offshore private equity funds.

● **Augustus Fund Administration is a specialist Private Equity Fund Administrator. Formed in 2002, Augustus has quickly become a leader in its field and is now responsible for the administration of \$65bn of funds. With over 100 staff, every fund is handled, on a day-to-day basis, by a fully qualified accountant. As a consequence, Augustus has gained a reputation for the highest standards of service. Service level agreements are agreed with clients as a matter of course and key performance indicators published and openly discussed with clients on a regular basis.**





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