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Offshore Report | July 2023



- *Peake: Taking Harneys to new heights?*
- *Conyers: Luthi drives Caribbean cohesion*

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### **REPORTS LEGAL**

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# Cream of Jersey: best in class

*Dominic Carman* meets with the managing partners of Jersey's elite law firms to discover how they are rising above economic challenges to deliver growth



Enjoying a preeminent reputation as a major international finance centre that is both stable and at the forefront of international regulation, Jersey is often cited as a best-in-class offshore jurisdiction. For these reasons, among others, it is also an important legal hub, where lawyers are renowned for providing some of the best advice that offshore law firms can deliver. "Jersey consciously serves to a higher regulatory standard than most international finance centres (IFCs), offshore or onshore," says Edward Mackereth, global managing partner at Ogier. "That's been a very deliberate play, done with a good amount of political nous, because longer term, IFC numbers will contract, largely as a

result of international regulatory pressure. Overall, the Channel Islands certainly punch above their weight. It's a different model: we don't want to be piling it high and selling it cheap." Jonathan Heaney, managing partner of Walkers' Jersey office, adds: "We see the Channel Islands market as the most gold-plated part of the offshore world. Historically, it may well have been over-regulated compared to some competitor jurisdictions; now, by luck or judgment, it's ahead and everyone else is playing catch up."

But short term, there are challenges. "With 13 straight interest rate rises and unprecedented change to the interest rate environment, it's taking everybody a bit of time

▲ **Jersey serves to a higher regulatory standard than most international finance centres**

to remind themselves that long term interest rates below 2% is not a normalised economic environment," says James Gaudin, managing partner of Appleby.

James Mulholland, funds partner at Carey Olsen, concurs: "In funds, our private equity and real estate clients face challenges because of the economic consequences of the war in Ukraine – for example, energy prices, inflation and interest rates. That's definitely challenged many of the markets in which they operate. Challenges are often good for lawyers, however, because they drive innovative thinking and bring change, on which good law firms thrive."

Jason Romer, group managing partner of Collas Crill, describes the current situation in notably

*“ Jersey has always made sure it’s doing things in the right way and following the appropriate international standards*

**James Gaudin, office managing partner, Appleby Jersey**



more dramatic terms. “It feels like the world is standing on the edge of an economic precipice with a big bungee cord strapped to our back,” he suggests. “Only time will tell whether the cord snaps and we’ll plunge into a deep recession, or whether it pulls us back from the brink.”

#### **MONEYVAL calling**

In meeting with managing partners from one end of Jersey’s Esplanade to the other, there is scant evidence that they sit on a vertiginous precipice. But there is a palpable sense of concern about Jersey’s imminent inspection by a permanent monitoring body of the Council of Europe, MONEYVAL: the Committee of Experts on the Evaluation of Anti-Money Laundering (AML) Measures and the Financing of Terrorism. Its aim is to ensure that Jersey has in place effective systems to counter money laundering and terrorist financing and comply with the relevant international standards.

Heaney explains: “MONEYVAL is coming in September. We, as a firm, are being interviewed

by them: CDD, KYC and AML procedures, and how we operate. There’s the expectation that, as a jurisdiction, Jersey has done what we can, but we’re in that ‘we don’t know what we don’t know’ scenario. We don’t know what they’re going to ask us, or what their agenda will be.” Romer adds: “There’ve been lots of communications within Jersey to make sure that everyone’s well informed about the purpose of the MONEYVAL visit, and whoever gets picked is well prepared. Making sure that, as jurisdictions, we’re squeaky clean and we protect the islands’ reputations as best we can – it’s taking up a lot of time, effort and attention.”

Heaney adds: “The regulators have done a good job. They’ve had to amend and update various laws, changing them to meet ever-increasing requirements. Whenever you change laws that have been there for years, especially in the AML/proceeds of crime space, that means changing procedures that people have followed for years, so there is inevitable disruption,” he says. “The industry has got

quite good at taking that in its stride. It takes time for people to understand what the changes mean, for the market to form a view of what they mean, and more time to implement them. Eventually, everyone gets used to it and a market view is formed on how you progress.”

MONEYVAL’s last assessment of Jersey’s compliance with the Financial Action Task Force (FATF) recommendations was in 2015. The latest assessment will result in a report being finalised in 2024, after which MONEYVAL’s Guernsey inspection will begin. It’s all about protecting Guernsey and Jersey PLC’s brand, according to Mulholland. “Within our financial services market, regulators, administrators, lawyers, and accountants have all worked together to solve a common goal for the benefit of the jurisdictions,” he says.

“The looming MONEYVAL inspection is a good example. Guernsey and Jersey both want to be a best-in-class offshore jurisdiction, which means proportionately well-structured legislation to attract business, but also to protect and support investors and other stakeholders. There was some swiftly adopted legislation to recognise a gap in some of our AML standards in Jersey. The industry was commendable in taking a pragmatic, roll-up-your-sleeves attitude to get this fixed, working alongside government and regulators.”

Gaudin outlines the Appleby approach. “I’m constantly evaluating our policies, procedures and assessments, making sure we comply,” he says. “As a jurisdiction, Jersey has always made sure it’s doing things in the right way and following the appropriate international standards. The regulator, government and Jersey Finance are behind it – a lot of resource making sure that people understand the business we do, ▶

the rationale for using Jersey as a jurisdiction and that we're heavily regulated, more so than most of our onshore counterparts. My hope and expectation is that will continue through and post the MONEYVAL visit and examination. It's a substance jurisdiction with a lot of experienced people on the ground."

#### **Regulation affects everything**

At Bedell, global managing partner Tim Pearce notes that Jersey has always been subject to a higher regulatory standard than the UK "because there's never been a level playing field," he says. "Everyone just assumed that because you're offshore, you're avoiding something. However, the level of regulation and compliance in the Channel Islands has always been higher than in the UK, so we are home to very well-regulated and compliant structures."

Continuous changes in the law to align Jersey with evolving FATF standards may drive advisory and enforcement-related work, but for

clients, the increased regulatory burden adds to cost.

"Offshore lawyers have always been subject to regulation and navigated the regulatory hurdles in place," says Pearce. "But more on-the-ground regulation that wasn't there before, it's really squeezing everybody and catching those that weren't caught before. In terms of laws and directives, there's so much more to comply with before you've even set a structure up. Jersey's new compliance with the FATF recommendations, pushing on to sectors that weren't previously regulated: because of increased costs, companies need to pedal harder to make the margins they need to make."

He points to specialist regulatory firms being set up, offering professional regulatory services, money laundering compliance and reporting officers. "Essentially it's outsourcing to a professional firm," he says. "That's something we're doing, and it's a real growth sector. The problem is people don't like paying to comply with regulation because they can't

necessarily pass that on to their underlying customers/clients."

Compliance nevertheless continues to be at the forefront of every regulated business, suggests Gaudin. "We've got the largest regulatory advisory team in the Channel Islands and we recently launched a compliance advisory business, which has done very well, on the back of Schedule 2 (Proceeds of Crime Law 2022) changes," he says. Carey Olsen is also seeing a considerable volume of enforcement work, according to Mulholland, "where we are supporting clients with regulatory investigations and enforcement action, and prosecutions."

Romer concurs: "Regulatory investigations, helping clients with regulatory work, we're doing lots of that across both islands."

Mackereth develops the point: "Almost everything we do has a regulatory aspect, but particularly the contentious regulatory or the liminal space, where businesses are under pressure from increasing regulatory burdens and from regulators who are themselves under pressure, need assistance."

He believes that robust regulation benefits Jersey. "It's more problematic for jurisdictions that chose the cheap and cheerful path and are now having to add quite rapid, incremental layers of cost," says Mackereth. "It's problematic for two reasons: first, if your USP is cheap and cheerful, and you're not cheap anymore; second, the risk of things going wrong where you're a business owner or operator in a jurisdiction, which is rapidly increasing the regulatory burden, leads to a great risk of uncheerfulness. If you're neither cheap nor cheerful, you're in considerable difficulty. Some jurisdictions are struggling with growing pains."

"It's pragmatic future-proofing for long term investment with increasing regulation, enforcement, fines, grey-listing, blacklisting – that will attract more funds

*"The level of regulation and compliance in the Channel Islands has always been higher than in the UK"*

*Tim Pearce, global managing partner, Bedell Cristin*



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*“Has PE dried up? Yes, in the traditional sense, but it has given other opportunities*

*James Mulholland – funds partner, Carey Olsen Jersey*

and investment over time. Jersey is becoming noted as a well-regulated jurisdiction in some markets not historically known for prizing those qualities – China and some other Asian countries, for example.”

Ubiquitous regulation also impacts the work done by Walkers. “There’s a regulatory overlay across everything we do in funds and corporate,” says Heaney. “You’re establishing a fund, it’s regulated – a collective investment fund, or a private fund, it’s generally caught by the law. Likewise, collateralized loan obligation (CLO) issuers, debt issuers are having to register under our new Proceeds of Crime Law. Previously, they didn’t have to. Regulation pervades all practices areas. Jersey has been doing AML, for example, long before it had to or before it was enforced. Therefore, changes in AML laws or economic substance, for example, haven’t been as difficult to implement in Jersey as elsewhere.”

In terms of the EU, Heaney adds: “We’re in quite a difficult position. Jersey historically had the UK on

the inside, fighting on behalf of the BOTs (British Overseas Territories) and CDs (Crown Dependencies).

“With the UK on the outside, the EU is putting much more pressure on offshore jurisdictions in terms of AML compliance, economic substance, proceeds of crime, having to live up to certain standards, being asked to do more than EU jurisdictions themselves. We’ve always tried to gold-plate Jersey, which now stands us in good stead.”

#### **M&A: deals, but no headliners**

Combined, Guernsey and Jersey have approximately 35% of the high yield and bond market on The International Stock Exchange (TISE), and during 2022 were responsible for 68% of all new High Yield listings and 45% of all new debt listings. But things are quiet with deals hard to get away because there’s less underlying M&A.

“Markets are flat which impacts M&A activity, but there’s more movement in the secondaries market,” says Mackereth. “The

current economic backdrop is making investment, and exits from investments, difficult because the multiples and the buyers aren’t there. So, there’s activity, just not big headline M&A activity. That will return. There’s also a huge amount of dry powder – people waiting to make investments – but the appetite for leverage is understandably limited right now, although valuation corrections and rising amounts of distressed sellers will balance that out at some point. We’re not quite telling people to take all their holidays before September, but lots of people took more holidays in the first half of the year. The corporate work has been picking up and we have had a number of larger transactions through – de-SPACs in particular.”

Although Jersey’s M&A picture appears mixed, it is less downbeat than in some jurisdictions. “We’re seeing a reasonable amount of opportunistic M&A: there’s some bargain hunting going on,” says Pearce. “We’ve got pretty resilient local M&A, even at the lower end of that fiduciary services market,” adds Gaudin. “That’s helped keep our M&A teams busier. In terms of fees, it doesn’t really matter, sometimes the local stuff can be just as good. Careys have a very active local M&A book – they’re opposite us on a number of these deals.”

At Carey Olsen, Jersey’s largest firm with 21 partners and 86 total lawyers and proud to be the only Channel Islands firm to have ‘a clean sweep’ of all 20 sectors as Tier One in Legal 500, Mulholland says: “Big-ticket, pure M&A work has dried up due to liquidity – fewer banks and less syndication. PE has held up reasonably well. PE-based restructuring work has kept our finance team very busy including fully or mildly distressed businesses using Guernsey or Jersey structures to arrange new equity. Has PE dried up? Yes, in the traditional sense, but it has given



*“ The trend has been towards solvent workouts, which then becomes corporate work*

*Jonathan Heaney, managing partner, Walkers Jersey*



other opportunities – local M&A, especially in the financial services sector remains strong.”

Gaudin is more upbeat on private equity. “We saw a reasonable slew of instructions in H1 – there’s lots of action for US funds looking into the UK market,” he says. “Services business, large administration businesses, have been flavour of the month for PE for some time. We’re seeing some traction there – Carlyle did one of their first deals in that space. We’re doing a lot of preliminary advisory work, high-level DD – it’s just taking time for big deals to push through.”

#### **Funds: retail flat, private placements rise**

The funds market in the Channel Islands, Mackereth notes, has been relatively flat. “Many go to Luxembourg or Dublin – we have offices in both,” he says. “But regulatory work on existing funds structures is enough to keep teams pretty busy and recently there has more interest and activity with new business spinning out. Fundraising in the alternative space, with very private/friends and family funds, is highly attractive and can be done

very rapidly and discreetly.”

Romer asks: “Has Jersey missed the boat? It depends which boat you want to be on. It’s certainly not on the UCITS EU boat. But in terms of the private fund regime, it’s still well and truly in play. The fund industry in Jersey is growing very quickly – not through the development of open-ended funds, but through private capital: the private fund regime may not be taking in 300-400 fund investors,

but is instead raising funds from 10 or 20 people.”

Pearce also argues that the volume of retail funds is steadily declining in both Jersey and Guernsey. Echoing the view on private funds growth, he points to statistics on Jersey private placement funds:

- 107 new funds in the last year, taking total assets under management to £62bn
- Regulated funds market up by £39bn to £488bn
- Bank deposits up by £15bn to £148bn

Jersey’s position as a prime location for establishing offshore investment funds has included a diverse range of fund types: Jersey Private Funds, Notification Only Funds (aka Eligible Investor Funds) and Collective Investment Funds (CIFs), such as Jersey Expert Funds and Jersey Listed Funds. Given Carey Olsen’s undoubted strength in funds work, Mulholland offers a different perspective.

“In Jersey and Guernsey, we advise over 1,300 Jersey-domiciled and Guernsey-domiciled funds, more than double our nearest competitor – the result of a lot of patient hard work, supporting our

#### **JERSEY LEGAL ADVISERS**

Domiciled market share ranking by funds as at 30 June 2022

Rank	Firm name	No. funds	By %	Assets in US\$	By %
1	Carey Olsen	544	36.88%	180,685,922,182	41.58%
2	Mourant	392	26.58%	166,975,002,827	38.43%
3	Ogier	326	22.10%	48,923,320,600	11.26%
4	Beddell Cristin	130	8.81%	28,403,960,531	6.54%
5	Appleby	29	1.97%	6,172,042,430	1.42%
6	Walkers	24	1.63%	1,486,936,084	0.34%
7	Voisin	13	0.88%	1,000,371,221	0.23%
8	Maples and Calder (Jersey)	6	0.41%	589,989,106	0.14%
9	Collas Crill	6	0.41%	99,361,547	0.02%
10	MJ Hudson	5	0.34%	170,705,639	0.04%
<b>Total</b>		<b>1,475</b>	<b>100%</b>	<b>\$434,507,612,166</b>	<b>100%</b>

Source: Monterey Insight / Includes all Jersey domiciled permit-holding and COBO funds but excludes securitisations and non-domiciled funds

## *“Has Jersey missed the boat? It depends which boat you want to be on*

**Jason Romer – global managing partner, Collas Crill**



clients over many years,” he says. “Activity levels remain very busy. Our clients are always looking at other opportunities. A classic example is the GP-led secondaries deal, where an ageing fund isn’t able to sell some of its portfolio companies in the market. Through the Guernsey and Jersey funds regimes, we can provide some great solutions where lead investors are able to underwrite a re-birth of the fund, whilst providing liquidity to exiting investors.”

He points to Monterey data which provides a snapshot of the funds market, but also of medium-term trends. “15 years ago, we were fourth in the Jersey rankings,” says Mulholland. “Over time, we’ve developed a reputation in two different markets among small-to-mid and upper mid-size clients. Monterey data helps to re-enforce the message. In Jersey, we’ve steadily moved up through the rankings to become the market leader, with over 35% market share of Jersey domiciled funds (by number of funds).”

### **Real Estate: coming back?**

Always cyclical, real estate has long been a key practice area for several big offshore firms in Jersey, particularly focused on large, complex real estate transactions in the UK, and property finance including real estate acquisition and development finance. “The economic backdrop, particularly higher interest rates, is impacting us on international real estate and we have a very large local real estate piece – the commercial side has been relatively robust, but residential in Jersey has fallen off the cliff,” says Gaudin.

“The wider macro piece isn’t helping,” he says. “You’ve got the UK operating in a vacuum compared to other major global economic powers, post-Brexit. We’re seeing a lot of challenges with inflation that some eurozone economies and the US aren’t.” Romer suggests: “The fastest area of growth over the next few years might well be real estate insolvency work in Jersey. Let’s see what happens with that bungee cord.”

Mackereth is more bullish. “We might be seeing the beginning of

the end of the downward trend for real estate,” he argues. “Many of our clients who’ve been sitting on their hands are now looking at transactions, predominantly UK-focused: City offices, regional offices, logistics and life sciences, which is a hot area right now.” In terms of local real estate, he confirms that commercial property investment is “subdued with real estate fund investment into the Channel Islands at relatively low levels. But market sentiment seems to be: it’s going to come back.”

Housing in Jersey and Guernsey is a real issue, particularly for essential employees, he adds. “For nurses or teachers, it’s becoming unaffordable to live here – we may find out we’re the statute with feet of clay. No one’s got the solution yet, but the islands need to focus on it and work out a solution that works for everyone.”

### **Trust litigation boom**

One area where there is no question mark over activity levels is disputes. “Litigation, globally, is booming, while in Jersey more litigation funders are coming in because access to capital isn’t what it used to be for private litigants,” says Pearce. “A lot of disputes revenue has helped disputes to become our strongest single performing team (in Jersey) over the last five years,” adds Mackereth. “(Disputes have had) a couple of strong years, notably in trust litigation where we’ve seen a strong up-tick in disputes between beneficiaries and trustees,” says Mulholland.

At Collas Crill, which is primarily private client and litigation focused, Romer is buoyant, predicting further significant growth on top of the firm’s 11% increase in revenues last year. “We’re involved in Guernsey with the biggest current corporate dispute and the biggest trust dispute across Guernsey and Jersey,” he says. “That’s a sign of the times: people are feeling quite



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litigious, which is reflected in the work across our business.”

He points to two “very large cases – acting for the directors of a Middle Eastern construction conglomerate, a \$1bn claim for breach of directors’ duties, wrongful trading and breach of fiduciary duties; and a very big trust litigation case, subject to privacy orders: the beneficiaries are trying to remove fiduciaries, and disputes exist within the family. They’re a function of several things, including tension between generations as to how money is deployed and ESG.”

Heaney says that trust litigation keeps one or two Walkers partners busy on a full-time basis – “economic headwinds exacerbate disputes between beneficiaries, families and trustees, which can lead to multiple claims,” he says. But whereas dispute resolution “used to be by far the biggest in revenues in prior years and it remains very strong, the firm’s three main practices have been equal in revenue over the past three years: investment funds and corporate, banking and finance, and dispute resolution. Finance

and corporate client bases tend to feed the other practice lines to a greater extent.”

### Remake, remodel

Goldmans Sachs Research economists continue to maintain their long-held view that the energy crisis will push the eurozone economy into recession this winter. Meanwhile, the EU central bank suggests that it should grow by 0.9% in 2023, while Britain’s GDP is expected to grow 0.4% this year and 1.0% in 2024, according to the IMF, which also predicts a decline of 0.5% in Germany this year. Whether there is low growth, slow growth or no growth, a broad consensus exists among Jersey law firms that refinancing and restructuring will continue to be very active practice areas. “Jersey’s not immune to what happens in the UK just as Cayman is not immune to what happens in the US,” says Pearce.

“There are a lot of non-contentious restructurings in Jersey, plus instructions on structured finance involving various underlying assets – from carbon credits to virtual

currencies – very much aimed at sophisticated investors,” says Mackereth. “We’ve been doing quite a bit of work on real estate restructuring, unprofitable contracts, development contracts that are now out of the money,” adds Gaudin. “We’ve seen a fair amount of restructuring coming via our Hong Kong office – mainland Chinese businesses.”

Mulholland points to “a significant increase in restructuring work, with complex workouts across several jurisdictions. There’s been a lot of cross-border court work in general, with a noticeable increase in cases arising from the Middle East which is unlikely to abate anytime soon.” Pearce identifies specific work. “In restructuring and insolvency, we acted for one of the largest creditors of a pan-Channel Island construction giant, working with them to achieve some consensual disposals safeguarding businesses and jobs,” he says.

Heaney notes that banks have tried to avoid full-blown insolvencies from taking place. “We’ve been doing a lot of workouts, solvent restructuring,” he says. “Banks have been quite reticent to pull the pin. We’ve seen many vehicles teetering on the edge of financial distress: where an event of default has occurred, debt providers are perfectly within their rights to enforce, but the trend has been towards solvent workouts, which then becomes corporate work – rejigging corporate structures, with bondholders taking over the ownership of the structure in a consensual manner.”

As recovery in the global economy is forecast to be relatively weak over the next two years, according to the OECD’s latest Economic Outlook, the outlook for Jersey’s law firms will ultimately depend on their individual efforts in competing successfully for premium work. For the cream of Jersey, there is every reason to be cautiously confident. ●

*“ There are a lot of non-contentious restructurings in Jersey, plus instructions on structured finance involving various underlying assets*

*Edward Mackereth  
– global managing  
partner, Ogier*



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# Jersey Finance: ‘doing an amazing job’

Jersey Finance promotes the island’s unique proposition on a global stage – from San Francisco to Singapore. So, how does it benchmark success?

As the world of offshore centres becomes ever more competitive, the business of selling the relative merits of individual jurisdictions follows an increasingly sophisticated path. For Jersey Finance (JF), the sophistication of Jersey’s brand is articulated on its website: “Jersey has been a leading international finance centre (IFC) for more than six decades. Thanks to a forward-thinking and ESG-driven approach, we are at the forefront of banking, corporate services, fintech, funds, investment management and private wealth, plus the specialist areas of Islamic finance and philanthropy.”

In similarly upbeat language, that message permeates through to the LinkedIn profile of Joe Moynihan: ‘Proud to lead the team and our partners as we promote Jersey as the leading global international finance centre.’ Appointed as JF’s CEO in 2019, Moynihan uses innate Irish charm to outline his full-blooded commitment to Jersey.

## Providing value

“Jersey Finance was set up 22 years ago, initially to promote Jersey as an IFC,” he says. “Funding is through member firms – any financial services business on the island, as well as significant support from the Government of Jersey.” Nobody

has to be a member, he explains. “Every year people get a bill, they pay it or not – a voluntary invoice, it’s a voluntary choice – fees are based on headcount. This ensures that we provide value for member firms. If not, they won’t renew. It endorses our value to the industry.” There are 170 JF member firms – from big banks to small consultancies and everything in between.

“Our membership numbers are fairly consistent, we very rarely lose a business,” says Moynihan.

As a representative body, Jersey Finance negotiates on behalf of industry with government and regulators. “We have a good relationship with both,” he says. “They understand that we are representing the industry and they might not like the messages we’re giving them from time to time. Ultimately,

▲ Jersey has been a leading international finance centre for more than six decades

they decide what they want to do from a policy perspective, but they’re getting honest feedback from us of industry views, impacts and concerns. If there are business opportunities that require legislative change, we put working groups together to bring that to fruition in conjunction with partners in government and regulators.”

## Promotion: key objective

Promotion is also hugely important. “Ultimately, that’s the key focus,” says Moynihan. “As a promotional body, we’ve got an appropriately-sized marketing team – with an increasing amount of work on social media. Our pitches and approach are unique in terms of international finance centres, although the message will vary slightly from jurisdiction to jurisdiction.”





He summarises the common elements in each pitch: “We have stability and certainty: stable government, stable economy – that’s not guaranteed in many other places. Our post-Brexit status hasn’t changed and won’t change. That gives a level of certainty. We have good quality regulation, really important. Regulation is particularly important in the fund sector: fund managers and investors don’t want a jurisdiction that isn’t properly regulated and doesn’t meet global standards. We have a level of experience and expertise that’s unique in terms of IFCs of our size, and supportive government, which is critical.”

Legal strengths are another critical dimension. “We have a good quality legal system, very professional judges, an independent judiciary and lots of case precedence,” says

Moynihan. “All of those are really important. We often refer to the financial and professional services ecosystem: top quality banks, top quality lawyers, accountancy firms, corporate service providers, NEDs (non-executive directors) and business support services.”

#### **US: focus on funds**

In the US, JF focuses on the fund sector. “We see a lot of new business coming through in the US; the challenge is how we push the fund message outside New York,” says Moynihan.

“Within our industry, a lot of our bigger firms are buying businesses in the US. Last year, we did events in Miami, Chicago and San Francisco. We focus on getting the right people round the table to target the message.

“Our US pitch to fund managers that want access to European institutional investors:

under AIFMD, they can use our private placement regime, which is ESMA equivalent and enables access to institutional investors subject to certain restrictions without the need for AIFMD overhead. ESMA equivalence requires equivalent legislation: we had that established pre-Brexit. Much of it’s down to the foresight of the government, and of the regulator.”

JF has representation on the ground in New York, Shanghai, Hong Kong, DIFC, Johannesburg and London. “We appointed somebody in Singapore in September 2022,” says Moynihan. “Providing platforms for member firms, running events, roadshows – that’s a constant across all of our target jurisdictions. In some of them, we’ve established Jersey as one of the go-to jurisdictions. A linear relationship with London is also important: physical

*“ We have a level of experience and expertise that’s unique in terms of IFCs of our size, and supportive government, which is critical  
Joe Moynihan, Jersey Finance*



proximity and time zone. We can service the US and the Far East here because of our central time zone."

#### **Benchmarking success: \$10m question**

So how does Moynihan benchmark JF's success. "That's a \$10m question, it's extremely difficult," he says. "Are there independently produced stats on US-originated funds showing growth? Yes. Is that all down to Jersey Finance? No. It's down to individual firms and many other factors. But the numbers have gone up significantly in the last five years, which reflects the time in which we've been involved."

For other jurisdictions, JF receives feedback on new business flows and monitors the introductions made by the JF team to member firms. "We also monitor BD meetings and strategic engagements, events and press coverage for Jersey in our different markets," adds Moynihan. "There's continued

positive feedback from member firms and key gatekeepers: an important benchmark."

In its direct relationships with law firms, JF has legislative working groups – "invariably supported by the legal community, including a Fiscal Strategy Group, (a subgroup of JF), in which we work with the government," he says. "That comprises tax advisors from the Big Four, trade association representatives and a number of lawyers. We get lawyers' support on our outreach. Many of our international events are supported by high quality representatives of our law firms who provide speakers and panel members."

#### **Positive attributes**

Moynihan concedes that the offshore market is very competitive, but chooses only to accentuate Jersey's positive attributes. "Whilst we may have a view on individual centres, we try to focus on our capabilities, capacities and key strengths. We

believe Jersey has a very strong proposition across a number of sectors and our professional firms have the experience and expertise to continue to support our global client base.

"We do not ignore our competitors and can, of course, learn from them from time to time. As an industry with global firms increasingly in multiple jurisdictions, we see greater co-operation between IFCs. Indeed, sophisticated clients will often require services best delivered from a number of centres. This is a very dynamic market and Jersey has a track record for adapting as circumstances change."

And the future? "The biggest risk is complacency," he says. "This is a very mobile industry – businesses can move funds and move people very quickly. It's really important that we keep sight of what makes us competitive, what makes us special as a jurisdiction." ●

## Jersey Finance: quote unquote

*"Joe Moynihan, and Geoff Cook before him – both very experienced, fantastic at getting ahead of issues as they arise and making sure that we're in the right place at the right time. We were lucky to have Jersey Finance very early on in our evolution as a global financial centre. They do an amazing job and open doors"*

*James Gaudin, managing partner, Appleby Jersey*

*"Jersey Finance is an impressive organisation. We've had two or three nice pieces of work, where people have gone to Jersey Finance saying we've got a particular problem which needs independent representation, and those have come across our desk"*

*Stephen Baker, senior partner, Baker & Partners Jersey*

*"Jersey Finance do a huge amount promoting Jersey. You get roadshows*

*in various jurisdictions, promoting Jersey, particularly in London, which we attend. They also do a very good job of corralling the various businesses to provide an industry-wide view on hot topics of the day. Jersey Finance actively lobby government to promote and protect the finance industry, so they're not just an external promoter, they lobby internally where they see areas that we could take advantage of, or traps we may fall into"*

*Kate Anderson, managing partner, Voisin Law LLP Jersey*







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# Channel Islands: premier independents

Alongside the legal giants of the offshore world, Jersey and Guernsey are home to a number of high quality smaller independent firms

## Jersey

### BAKER & PARTNERS

Among the big offshore firms whose offices line St Helier's Esplanade and the surrounding streets are several highly-capable boutiques – mostly, but not exclusively, specialising in litigation. Prominent among them is Baker & Partners. Senior partner Stephen Baker established his eponymous firm after moving from London.

“When I started here 20 years ago, I didn't perhaps appreciate the particular challenges in setting up in an offshore centre,” he says. His efforts have since paid dividends: Baker himself now has a Band 1 Chambers and Partners ranking for Offshore: Dispute Resolution while his firm enjoys a Tier 1 ranking for Jersey Dispute Resolution in the Legal 500, alongside Carey Olsen, Collas Crill, Mourant and Ogier.

Much of the firm's work is international. “We were instructed to coordinate the offshore asset recovery efforts in 1Malaysia Development Berhad (1MDB), a sovereign wealth fund,” he says. “For the last two years, we've been heading up the recovery team everywhere outside Malaysia with litigation in more than a dozen jurisdictions. Proceedings are ongoing in many jurisdictions, including Switzerland, the United States, BVI and Cayman. We run it with a pretty streamlined team. We're doing the Cayman

*“ I can see attractions for the mainland Chinese structuring things through Jersey, not least that the time zone is so much better than the Caribbean*

*Stephen Baker, senior partner, Baker & Partners*





and BVI aspects with our local offices.”

### Caribbean growth

The firm is also instructed in some cutting-edge regulatory matters, which will probably become public later this year, and in multinational building projects relating to Anti-Money Laundering / Countering the Financing of Terrorism (AML/ CFT).

The recent addition of Cayman (2020), London (2020) and BVI (2023) offices has helped to grow the firm’s international dispute resolution profile. “Cayman has gone to plan and better, and in BVI, we’re already very busy,” says Baker. “Jersey’s a different market, but the core message is the same: we’re genuinely conflict free and independent. We find sophisticated purchasers of legal services understand that when they need to forcefully pursue a point, they need someone who will really point a finger – be that at an individual or an institution.”

Jersey remains the engine of the firm with 40+ staff, he notes. “The bulk of work probably still originates outside Jersey, but we’re also getting more local trustees, financial institutions and high-net-worth individuals coming to us – a lot of trusts work, commercial disputes.”

As competitors, he points to Carey, Mourant, Appleby, Bedell Cristin, Ogier and Collas Crill, although he believes that for strength and depth in litigation, “it appears to me that we are leaders.” Nevertheless, he reserves particular praise for Jared Dann at Appleby, Ed Drummond at Bedell and Damian James at Collas Crill, as well as lawyers from his own team.

### “Lightning-strike work”

“Simon Thomas and James Sheedy are doing an increasing amount of trust work, Lynne Gregory is much sought-after, particularly in corporate disputes, and William Redgrave is acting in a trial representing a senior

▲ **Jersey remains the engine of Baker & Partners, with 40+ staff**

lawyer: the former partners of Collas Crill are in dispute about the terms of sale of their trust company,” he says. “William is instructed in most of the major commercial litigation (in Jersey). If he isn’t, I ask myself: why not?”

Looking ahead, Baker predicts more Middle Eastern disputes and increased Chinese business in Jersey. “That’s obviously dependent on geopolitics, but I can see attractions for the mainland Chinese structuring things through Jersey, not least that the time zone is so much better than the Caribbean,” he says. “Our work is lightning-strike: it comes from all over and in strange ways. It’s unpredictable and that’ll stay.” Building the firm remains a priority. “It would make sense for us to have someone in Hong Kong and building our London office is quite important,” notes Baker. “I’d like to get another senior person involved in running the London show, getting out and shaking hands.”

*“ It’s the ability to build relationships where we really shine... We have sticky clients, many who’ve been with the firm longer than I have*

*Kate Anderson, managing partner, Voisin Law*



## VOISIN

“We have a very strong commercial practice, primarily international facing, within which we have a strong banking team,” says Kate Anderson, managing partner of Voisin Law, which offers a full-service alternative to the bigger firms. “We’ve a wide variety of local clients – from high-net-worth to companies in building and retail – internationally, more investment vehicles, predominantly property-based. We’re generally acting against Carey Olsen, Ogier, Mourant and Bedell – much larger firms than ourselves.”

Voisin’s second largest practice is property, both commercial and residential, followed by probate and estates, and litigation. In recent years, local litigation changed, suggests Anderson. “There’s a lot of dispute resolution rather than actual litigation,” she says. “We’ve gone from having a very long court list to a list that generally has only one or two people and, quite frequently, none.”

### More mediation and ADR

Jersey litigation is expensive, she says. “It’s much more about mediation and ADR. When we’re preparing international commercial agreements and clients say we’d like it to be Jersey law, we quite often respond: it’s cheaper to

litigate in the UK, the rest of your contracts are in the UK and, unless there’s a commercial reason, there’s little point in making the contract subject to Jersey law.”

Fees, she notes, are under pressure. “Everybody wants to do the best for their client in terms of shrinking fees, but business costs are rising,” says Anderson. “Salaries are the main expense. It’s becoming more expensive to live here, we’re getting a smaller pool of talent – people are leaving the island, so there’s strong competition for staff.”

The firm primarily competes on relationships, as well as price, according to Anderson. “We often come in less expensive, but it’s the ability to build relationships where we really shine,” she says. “We have sticky clients, many who’ve been with the firm longer than I have. It’s about knowing they can talk to me (or anyone else), no matter what the deal is. It’s also about getting to know their business, so you know before you pick up the phone and ask the question, what the answer is.”

### Relationships matter

So, how does Voisin build its practice? “You just keep talking to prospective clients,” says Anderson. “If you get a chance to carry out work, you provide a good service every time. We’re part of various networks, so it’s important

to keep reaching out to contacts, making sure you’re not forgotten, that you have the relationship. Law is a relationship business, it doesn’t matter who’s on the referral list; if they don’t know you, you don’t get a referral.”

Jersey could be an offshore ESG leader, suggests Anderson. “We’re in a good place, with a huge amount of knowledge, but you’ve got to walk the walk,” she says. “We’ve got some fantastic businesses that are very focused on being carbon neutral, implementing good governance etc. But I worry about the cost-of-living crisis – we were getting there, but will it be a case of: we can’t afford it?”

Anderson anticipates that Voisin will have “a decent amount of work in local commercial property – I’d be quite happy if we achieved 10% growth. People are taking a lot of short-term debt. For the next couple of years, we’re going to be churning through the short-term debt and adjust until we find some stability with interest rates. We’re going to see clients treading water because the debt is expensive and looking at second- and third-tier lenders.”

Jersey, she concludes, may have “a few difficult years, but I’m optimistic that we’ll be able to grow, adapt and move forward.”



# A personal approach to Guernsey Law

Ferbrache & Farrell LLP is an independent Guernsey law firm. Our practice areas include corporate, property, dispute resolution and private client. Our ethos is our professional but people based culture and our commitment to delivering a premier, partner-led, personal and cost-effective service to our clients. As a commercial Guernsey law firm we have both a local and international outreach.

Our corporate department offers full service corporate, banking and commercial cover, and is able to advise on all aspects of Guernsey corporate and commercial law, including general corporate and M&As, banking and finance, regulatory, investment funds, asset management and listings on The International Stock Exchange (TISE).

## Guernsey

### BABBÉ

Legal directory rankings for Guernsey are dominated by big international offshore firms with only two Guernsey independents making the cut: Babbé and Ferbrache & Farrell (F&F). Both firms benefit from significant referral work via the Jersey offices of big offshore firms without a Guernsey presence as well as diverse City and private client firms.

"Externally, we're probably regarded as a litigation boutique, but we also do a significant amount of non-contentious work in which we've recently invested," says Nick Robison, Babbé's managing partner.

"Although we've more litigators than non-litigators, we service ultra-high-net-worth clients, and the fiduciaries servicing them, across all areas of practice, from 'floor to ceiling' or 'cradle to grave' as the case may be. As a firm, the last eight months have

been the busiest we've had for five years.

"Because we're Guernsey's largest single jurisdiction firm, we're perceived as being good at what we do, and a genuine rival/competitor for Guernsey work in litigation. Most of Guernsey, including our client base, remains very UK focused. Increasingly, we have structures involving South African, European and Israeli families and parts of the Middle East. In terms of referrals from multi-jurisdictional firms, because we're more litigation-led and have a smaller corporate or trust offering, they probably believe we're not going to steal their non-contentious clients."

#### Trust litigation spike

Having previously worked for two Sydney firms, Robison made his mark in Guernsey as a talented litigator. "When I arrived in 2010, complex, commercial litigation was still

quite new here," he says. "The Guernsey litigation market has only developed as a properly sophisticated body of law over the past 25 years. We became much more litigation-led."

Guernsey has seen a sustained spike of trust litigation. "The old adage of 'clogs to clogs in three generations' is 100% true," says Robison. "That scenario of building it and burning it down within three generations comes up very frequently in litigation. Trusts settled by typically wealthy patriarchs to preserve wealth for the future generations – at some point, those future generations will know nothing other than fantastic wealth, and that can manifest in a willingness to litigate over things that may seem unnecessary to normal folk."

There are significant trust disputes involving family trusts, and a significant number of law firms involved in Guernsey, London and the US, suggests Robison. The sweet spot, he believes, is £8m-20m – "a sufficiently large pot that people can afford to spend money on lawyers, but sufficiently small

*"When you go multi-jurisdiction, you lose some oversight. The bigger and broader you get, the more the quality suffers"*

*Nick Robison, managing partner, Babbé*





that they're anxious about how much they're going to have left." Currently, only a couple of disputes exceed £1bn, he estimates, with more at £200m+ and double figures up to £20m.

"I tell every client: Leave your principles at the door because, as soon as you start paying me, you're paying my children's school fees instead of your own children's school fees. Let's find a solution to extract yourself from this situation. Every litigator worth their salt will say: it's better to settle than go to trial."

#### **'Leave your principles at the door'**

To assist Guernsey firms, the English Bar is hugely relied upon: Serle Court, Wilberforce, New Square, Maitland Chambers, and XXIV Old Buildings. But, Robison says, "we haven't tended to brief out very much because we've had sufficient confidence in our competence and, without putting too fine a point on it, fees going to English counsel are fees out the door. More recently, we've made a more conscious

decision to brief out a bit more."

Robison follows the Schumacher principle: Small Is Beautiful. "When you go multi-jurisdiction, you lose some oversight. The bigger and broader you get, the more the quality suffers. A huge part of our USP is that we're single jurisdiction. If we aligned ourselves too much with one firm, or another jurisdiction, that may affect the quality of service and our client relationships. As an offshore firm, there's a risk of losing quality control if you go beyond a certain number."

#### **FERBRACHE & FARRELL**

Guernsey's other independent law firm of note is Ferbrache & Farrell. Established in November 2016, its founders are both well-known: Peter Ferbrache is Chief Minister Deputy, Guernsey's most senior politician, while Gavin Farrell, noted for his expertise advising on investment funds, was a prominent partner at Ozannes. Following Ozannes' merger with Mourant, Farrell –

▲ **Guernsey has seen a sustained spike of trust litigation**

together with Ferbrache, Alastair Hargreaves and Martin Jones – decided that they wanted to launch their own partnership.

F&F has grown "in a measured way", according to Farrell. "We started with nine and we're now north of 30 (staff)," he says. "We believe that our positioning as a single jurisdictional office boutique commercial law firm, albeit with international outreach and best friend relationships in the other OFCs, has benefitted us. Our firm is pretty much full-service, covering litigation, corporate and commercial, property (local, high-end and commercial UK) as well as private clients. I like to believe that we hold our own when dealing with the large Guernsey firms which are members of international offshore groups when either pitching or negotiating transactions."

#### **Guernsey still 'punches above its weight'**

Farrell offers an unvarnished assessment of the local market. ►



*“ Despite the adversity, Guernsey has maintained a leading position within the offshore world*

*Gavin Farrell, partner, Ferbrache & Farrell*



“The work flow into Guernsey is not as plentiful as it used to be a few years ago,” he says. “That’s primarily due to the macro-economic situation we’re in having a related impact on capital raising and new structures. But it’s also due to the continuous misconception with regards to the role of the offshore jurisdictions and offshore financial centres (OFCs) and the increased competition of the on- and mid-shore jurisdictions all affecting the bread-and-butter work that used to come here and the other Crown Dependencies.”

A number of competitor jurisdictions have “veered away from their offerings on the retail and blue-chip side only and have tried to take a share of the offshore alternative investments’ segment”, according to Farrell. “However, despite the adversity, Guernsey has maintained a leading position within the offshore world, although perhaps more on a qualitative assessment as opposed to a quantitative or volume measurement. It is fair to say that it is not the land of

milk and honey it once was but, as a small and nimble jurisdiction and punching above our weight, we have followed the changing environment and adapted accordingly.”

Having recently launched a UK property and real estate practice from Guernsey, Farrell notes: “We are particularly pleased in that we are the only non-UK law firm outside the UK which is accredited by the UK Solicitors Regulatory Authority to provide UK property and real estate legal advice.”

Litigation and regulatory work continue to grow, while the firm’s corporate work flow is very varied, notes Farrell, with “a good mix of international as well as local clients in corporate/ M&A, banking and finance, funds set up and ongoing work, shareholder activism and general commercial work.”

#### **‘Professional, yet family atmosphere’**

He describes F&F as “a firm operating within a professional, yet family atmosphere,” and believes it is “quite unique” in Guernsey. “We’re the only

commercial but full-service law firm with decent-sized practice areas, covering all angles of legal work, which is not part of a global offshore group, but competes with the big boys in the Guernsey market.”

The evolving demand of Guernsey as an OFC into more bespoke structures with greater qualitative assessments and considerations has changed the landscape, suggests Farrell. “In terms of F&F, there’s now a greater reliance on the experience and knowledge of the various individuals in our firm,” he says. “In parallel, we’ve been able to provide a one-stop-shop for all litigation and regulatory work, Guernsey corporate structures dealing with UK and Guernsey property, as well as private clients – both here and off-Island.

“As a mid-size firm, we continue to grow ‘on demand’ without being in a position where we have more people than work coming in. Our ethos is not to needlessly grow for the sake of achieving a magic number, but as and when we need to develop.” ●





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# Peake: taking Harneys to new heights?

Since being appointed to the top job in January, *William Peake* has his eyes firmly fixed on overseas expansion with Jersey and Dublin on his target list

By turns humorous and self-deprecating, a more naturally engaging global managing partner would be hard to find: that much is apparent from watching the series of empathetic online interviews that William Peake has recently given outlining his vision for the BVI-headquartered firm. “I do a weekly video to the firm, a few minutes of what’s on my desk,” he says. “The main reason: when I visit other offices, it gives people a hook to stop me in the corridor and have a meaningful conversation.” The serious mindset required by the role he now occupies is also in evidence – an essential prerequisite,

given the weight of Caribbean competition from the likes of Appleby, Carey Olsen, Conyers, Maples, Mourant, Ogier and Walkers, among others, which has intensified in recent years. But Peake’s ambition goes beyond maintaining Harneys’ position as a big hitter in BVI and Cayman-related litigation and corporate work. His strategy is suffused with talk of expansion.

Peake joined Harneys in 2014 as a senior associate in the litigation, insolvency and restructuring group and was promoted to partner in 2017. Previously at Maples, he speaks highly of his former firm. “I’m completely biased, because I

trained and worked there for 12 years, but Maples remain fantastic to deal with: the calibre of lawyers is really top notch,” he says. In terms of local competition, he notes: “We see a lot of Walkers, and more and more of Ogier.”

## Middle East focus

At Harneys, he further developed the firm’s heavyweight litigation practice from its London and Cayman offices, acting as the lead partner for the official liquidators of a Cayman SPV in relation to the \$9.2bn Saad litigation – the longest running and highest value case ever to come before Cayman’s Grand Court.

*“ I realised early on that I wasn’t selling Harneys, I was selling the jurisdictions*

*William Peake, global managing partner, Harneys*







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"We were really successful in London, with really clear messaging," says Peake. "I would go into meetings (with English lawyers) and say: just so we're absolutely clear, we do not practise English law, we will never ever practise English law. And they would say: that's so interesting, no offshore firm has told us that, we just assumed that you were essentially a Trojan horse trying to take our work. That was the successful strategy, certainly in London. I realised early on that I wasn't selling Harneys, I was selling the jurisdictions."

The first months in his new role have been "really interesting, really challenging, in equal measure," he says. "What we've faced offshore has been mirrored onshore. The issues we're grappling with are exactly the same: Ukraine and Russia, an absolutely diabolical backstory to the impact on businesses that's changed where people are doing business."

The recurring theme, he notes, is the Middle East: "A constant narrative around what's happening there, the opportunities." He is excited by the potential of Saudi Arabia and, by extension, what it might mean for Harneys.

#### **\$750bn sovereign wealth fund**

"When you have a \$750bn sovereign wealth fund, the scale and potential reach is so large, it impacts everybody in every region," he says. "That mercantile joie de vivre will always attract advisors and individuals who are interested in doing deals. I first went to Saudi in 2014 on the Saad litigation – it will end up in the Privy Council. To revisit now, it's unrecognisable. That change concertinaed into a decade is incredible: it's driven by huge prosperity and by individuals

attracted to what's happening there."

A lot of dispute work is emerging, he adds. "Saudi insolvency laws are in a nascent stage, but becoming more pronounced, more tested. In various issues, there are Cayman vehicles in the structure chart. That's going to spin off work. It was interesting for Middle Eastern deal advisors to see the infrastructure and integrity of decision-making, because they had a naivety about Cayman: they just saw it as a Caribbean island. Consistency of the courts will continue to be a crucible for disputes that arise out of the Middle East."

At a time when deals are scarce, the PE world is now driving activity – they need to deploy their capital, according to Peake. "Their diversification, what they hold on their books, is so much more novel than two or three years ago: pretty conventional M&A business. They're specifically buying off minority shareholder rights and going in hard on them. Much of that is purely out of China and they're aggressively looking at those positions." Restructuring and insolvency are also on "an upwards trajectory", he notes. "It's interesting, yet depressing, that queries have such an echo of 2007-8. They're all credit issues: the crunch is coming. A different factual matrix, but the first principles are exactly the same."

#### **Disputes: 'really busy'**

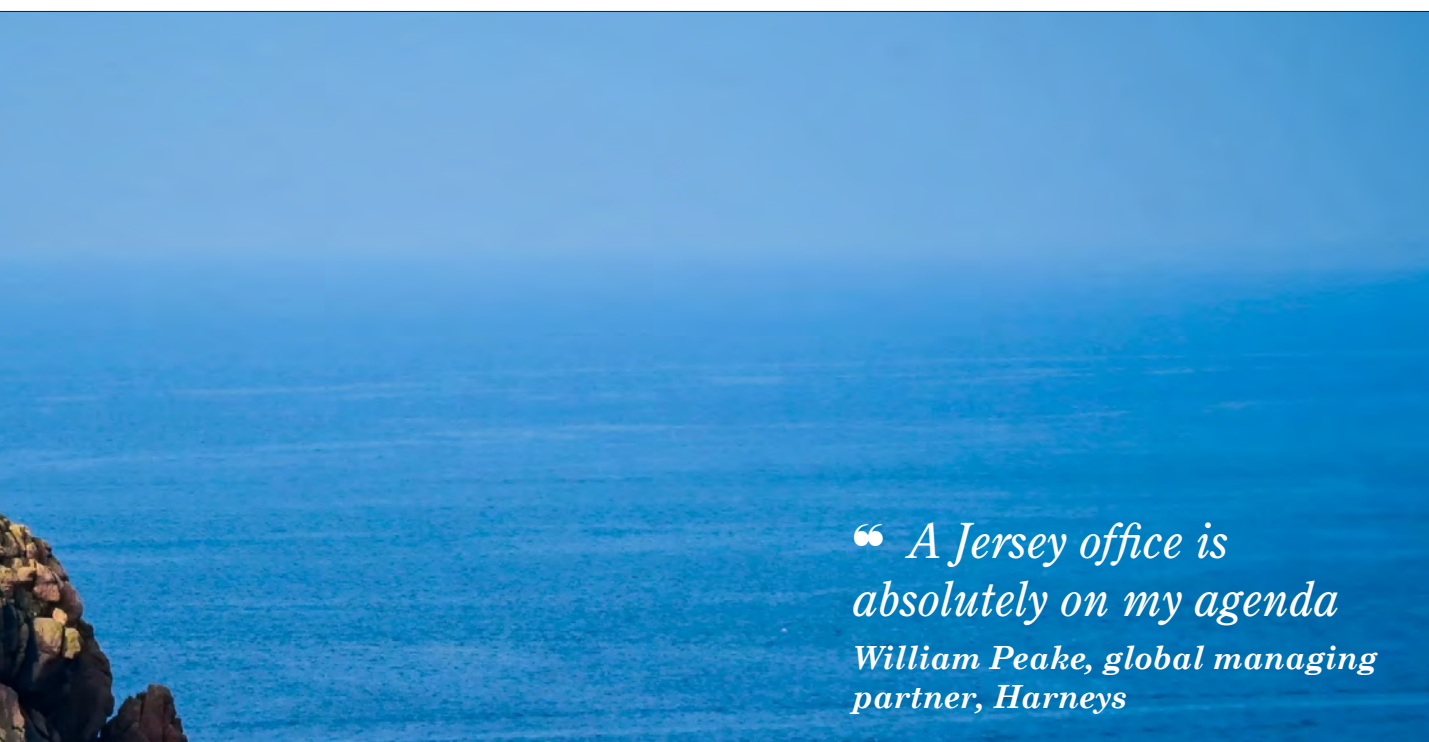
Dispute resolution arguably remains at the heart of what Harneys does best. "Disputes is really busy," says Peake. "In many Chinese real estate disputes, we get the restructuring gig. We're acting for a significant clip of debt holders in Evergrande (the troubled Chinese real estate developer). The work spinning



out of these cases enables us to flex our jurisdictional muscle: we can service clients in Asia time zones, but do all the court-facing work in Cayman." A good way to gauge the size of any dispute, he adds, is how conflicted the major firms are. "In Evergrande, everyone's conflicted. The reach of the case is huge."

Peake points to "a really good advocacy element in our BVI and Cayman teams, including an in-house silk in the BVI. Typically, it's equality of arms: if the other side briefs a silk, so do we. In Cayman and BVI, many of the judges are drawn from England or the Channel Islands. If it's a local advocate, they respond: I'd much rather have Mr or Ms X on this point."

He identifies the evolution of the role that clerks play as fascinating. "For example, Nick Luckman at Wilberforce Chambers is somebody to call if I've got a problem," he says. "He's magic circle partner smooth. There are so many user-friendly silks. In dealing with a Wilberforce junior recently, I thought: you're really



*“ A Jersey office is absolutely on my agenda*  
*William Peake, global managing partner, Harneys*

embarrassing me because you’re so smart, an overwhelming intellect.”

Cases offshore are renowned for their duration. Peake points to two which have kept Harneys busy for years: “The Saad litigation is probably going to kick off again and Luckin Coffee (the Chinese coffee company and coffeehouse chain) also has a tail, the restructuring piece,” he says. “But Iraq Telecom is new, a BVI and Cayman case that enables us to showcase two big teams in both jurisdictions: a really good example of them working hand in glove. It has a routine premise of enforcing a DIFC award, but it’s throwing up a huge number of issues and, again, coming out of the Middle East.”

Making its mark in the Caribbean, litigation funding is becoming more innovative, notes Peake. “I like Harbour, they’re really straightforward,” he says. “Every funder will say: we do funding differently. You think: I’ve heard this a million times before; I suspect you don’t do it differently. They say: we have a different risk appetite. No, you

don’t. But Harbour lead from the front, because they go out and spend time in the jurisdictions. Charles Jeffery (Director of Legal Finance at Harbour), in particular, will spend time in the BVI and Cayman. That’s how you get a foothold in the jurisdiction.”

#### **Jersey, Dublin...**

Getting a foothold in other jurisdictions is certainly on Peake’s priority list. “A Jersey office is absolutely on my agenda,” he says. “We dipped our toe in the water with Nicola Roberts, a Singapore litigation partner who is Jersey-qualified. Our transactional individuals, particularly in London, need to have the Jersey play.”

Joining Maples and Walkers, both long-established players in Dublin, Ogier merged with Leman last year to become the third offshore firm with an Irish footprint. For Peake, who is Irish and a graduate of Trinity College Dublin, the prospect is tempting, but not using the Ogier model.

“Ireland is a really interesting play,” he says. “Frankly, I can’t put it on the table because my

partners say: you just want to move home. In Jersey, I suspect it would involve taking over a business (i.e. a local law firm) because of the mature market. In Dublin, I don’t know. My baffling levels of self-arrogance would say that I could do it on my own because I studied there. I know the Dublin market inside out. Every few days my wife, she’s from Dublin, texts me: where are we on this Dublin office? It would be a small operation, if we were going to do it, because there are some really good small firms in Dublin – ex-Arthur Cox, Goodbody partners – who’ve started on their own.”

Peake develops his thinking. “People have watched the Ogier Leman move with real interest,” he says. “Ogier has got such a good brand. The offshore world is so small, so ring-fenced. If we were going to do Ireland, we would mirror our London business model. We wouldn’t practise Irish law, because there is the insanity of people instructing a firm that’s going to cut their lunch. I can’t get my head around it.” ●

# Conyers: Luthi drives Caribbean cohesion

Conyers chairman *Christian Luthi* talks to *Dominic Carman* about the firm's commitment to the Caribbean and a renewed focus on Dubai and London

## How would you describe the past year?

The Bermuda market tends to follow the US market – a rule of thumb, in my experience over the last 35 years. Our activity levels are dictated more by the US markets. But we don't close our eyes to Europe: our insurance market is very Europe and UK-oriented, and insurance makes up the lion's share of the offshore product in Bermuda. Insurance markets generally had a reasonably good year; the insurance product in Bermuda remains extremely vibrant, which buoys up

Bermuda's international business proposition.

Last year was difficult across all capital markets, because of Ukraine and economic slowdowns. We were pleasantly surprised by the uptick at the end of our financial year, the beginning of 2023. It's continued: our busyness levels have remained high, particularly in Bermuda – from April-June, we exceeded budget. It is encouraging. I've done this long enough to know that one quarter does not a year make, but it's good to see. There's cautious optimism in terms of

professional services on the island. There are looming regulatory and global tax issues around the corner, but the prognosis is good and, from an international business perspective, Bermuda as a jurisdiction remains very sound.

## What drives your Cayman strategy?

We've put a lot of strategic focus on and have incrementally grown our Cayman office. We are making intelligent hires and recruiting good people: that continues. Plans are in the works, which I'm very optimistic about

*“ Our strategy is to win more market share for the office – that has been successful over the last three years*

*Christian Luthi,  
chairman, Conyers*







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and hoping to announce later this year. Our strategy is to win more market share for the office – that’s been successful over the last three years. We’re smaller than the largest players in Cayman, just as they’re significantly smaller than we are in Bermuda. There is a lot of Cayman work to be won.

Bermuda and Cayman have positioned themselves very differently over the last 15 years.

Having bent over backwards to have its international reputation, particularly with the Europeans, squeaky clean – with FATF and CFATF, Bermuda imposed a lot of regulation early in the last decade.

In Cayman, that process was delayed. For several years, Cayman benefited in terms of winning work: institutional investors really liked how easy it was to get things done there. The regulatory environment is changing. But we’re very encouraged by the development of our Cayman product – our Cayman office is up 15/20% Y-o-Y. Cayman is still incorporating 16,000 companies a year, not counting limited partnerships and other things we don’t see. They’re putting a concerted effort into winning more insurance work, which we’re watching very closely.

We recruited an insurance partner in Cayman a few years ago. Insurers use Cayman for different reasons than Bermuda, but the two jurisdictions almost complement each other, with some clients now wanting to put structures in both.

#### **How has Cayman’s grey-listing by the CFATF affected CLO work?**

Cayman had 63 CFATF recommendations which have all been cleared. They’re anticipating that coming off the CFATF grey list in October. The CLO market has been significantly affected. There was a big push to get CLO business that couldn’t go into

Cayman into both Bermuda and Jersey/Guernsey. Initially, the latter won out, but we’ve seen in the last three months new CLO structures coming into Bermuda, which we’ve been a part of. There seems to be a greater alignment between Bermuda and the CLO market in terms of how transactions get done. We’ve seen a few CLOs coming into Bermuda for that reason. They quite like using Bermuda instead of the Channel Islands. We can expect that large parts of that market will go back to Cayman if it comes off the grey list.

#### **Is more competition in Bermuda beneficial?**

We’ve seen growth in the advisory accountant side investment. Leaving aside Walkers, Carey and Harneys, which have been in Bermuda for some time now, we’ve seen Teneo, with business lines that were acquired from KPMG. Grant Thornton has put an advisory practice in Bermuda. Rawlinson and Hunter have geared up, and Kroll. They see Bermuda as a place worth investing in. We are seeing more competition in that space. Having a more diverse and vibrant legal professional offering has been good for Bermuda and for Conyers.

#### **As BVI seeks to overcome its recent problems, how has that affected your work?**

It would be misleading to say that BVI hasn’t felt the effects of its EU blacklisting: the number of BVI incorporations is down. BVI really is a different offering than Bermuda and Cayman: more holding companies (some with huge assets), smaller companies and a less expensive proposition. In the 400,000 companies on the corporate register, there are some big-ticket clients, which we’ve always targeted. Our corporate business has remained resilient in spite of the blacklisting. But we



had to deal with client concerns about the jurisdiction.

It hasn’t been a great year for the BVI Government – that’s been tricky. But when you have a corporate base of 400,000 entities, there’s always work. Again, that will continue. If companies were to stop incorporating in BVI tomorrow, we’d all still be busy for the next five to 10 years because there’s so much work coming out of BVI, particularly from Asia. There’s now more focus on regulation in BVI: that means more regulatory work for lawyers – not just economic substance, but also matters like accounting regulations.

#### **Can regulatory compensate for the shortfall in M&A and capital markets work?**

Big ticket M&A work and restructuring are very accretive; regulatory work is more easily commoditised. Mainline regulatory versus contentious regulatory: in Bermuda, we’ve been doing more contentious regulatory – either instructed by the regulator or by third parties trying to deal with difficult



regulatory issues. Our regulatory teams in all of our jurisdictions are busier.

**Asia delivers a key part of Conyers' workflow: how is that evolving?**

A big story with Asia has been tighter regulation around listings in Hong Kong. SFC, the listing regulator, introduced new regulatory provisions and financial requirements, making it more difficult for companies to list in Hong Kong. That's not been good, but we continue to do very significant deals there.

We were expecting a recovery, just as financial markets were, of a much more robust scale. Three months ago, I would have been much more bullish on the extent of the recovery of offshore corporate business coming out of Hong Kong than I am now. Work flows have improved significantly since last year, but that recovery has been less than anticipated so far this year. We've had a steady stream of insolvency-related debt restructurings. But thinking about the future of offshore, we've got to look at the front end, not the back end: births, rather than

deaths, because that's going to drive future business.

**What trends would you identify?**

There's more emphasis on PRC-based and PRC-led business. Beyond government interference in Hong Kong, there's greater insistence on doing business in Mandarin, rather than Cantonese. Mandarin-speaking lawyers, proficient in English, are at a premium: that's symptomatic of a trend. China believes it can convince the world that it can provide capital and stand alone. We're seeing a shift in the business environment: there's much more scrutiny on the Chinese side in terms of foreign investment, and there are more hoops to go through if you're a foreign investor. That's also happening in the West. Although we're going to be dealing with a tighter regulatory environment, we are still very committed to China.

**And the flow of work and people from Hong Kong to Singapore?**

There's been a bit of an exodus of talent from Hong Kong, some

movement into Singapore and a reluctance to go back. Some firms' Asian proposition is now founded on a Singapore presence. That's not just anecdotal. It's a real issue. Anyone living in Hong Kong needs to grapple with concerns about personal freedoms, which was brought into such stark reality with the advent of the Extradition Act. That hasn't helped. But China can't be ignored: such a massive player on the economic stage, people will still need expertise in how to navigate those markets. The landscape is changing and it's not quite as frothy as it was. I see it going up, but more incrementally over a longer period.

It's wrong to look at Singapore as an alternative because Hong Kong has such a unique position geographically and economically, and the levels of capital going through HK are significantly higher. Singapore will benefit: it's been very successful at giving itself a reputation of credibility, and it has focused government support, which has really stimulated its business. They've been prepared to wait to let it grow over time, and they've done that extremely well. Disputes is an example. Back





in 2011, there was no one in their arbitration centre; now, you can't get a booking.

But there's also a danger in overstating the position in Singapore. It's a heavily regulated jurisdiction, and the overall approach is very structured. You see a lot of work coming out of Singapore and going to Cayman and BVI, which have slightly more flexible regulatory approaches.

#### **As elsewhere, disputes work is strong in the Caribbean. What stands out?**

We've done some successful work in BVI on crypto failings: the really big story in terms of BVI litigation and elsewhere in the Caribbean. Our BVI office has been heavily involved with the Three Arrows collapse.

In Bermuda, we've had big private client disputes, corporate disputes, restructurings and insolvency disputes. That portfolio is largely the same, with a significant amount of litigation arising out of some segregated accounts companies' failures three years ago. We've been representing probably the largest creditor across all three of the companies, which has involved leading members of the UK company Bar over the last couple of years. A number of valuation proceedings have come to Bermuda — Jardine is the big one — which we were conflicted on.

Bermuda still has a lot of private client litigation, significant trust restructurings, family litigation and succession litigation for ultra-high net worth individuals. There's also corporate litigation, shareholder litigation and anything to do with corporate governance, which has to be litigated in Bermuda. Cayman is similar, with our restructuring and contentious restructuring work notably increasing over the last year.

#### **Any particular sectors?**

Not necessarily sector specific,

it's more debt holders and distressed companies: telecoms companies, Chinese real estate cases, extractors, oil, commodities companies out of Asia.

There's always a steady stream of restructuring insolvency work. Over the last few years, that stream has increased a bit, but it's not the flood that some predicted. That may happen. But a lot of bondholders and stakeholders have been content to amend and extend, rather than put things into processes, because that means taking write downs on their books at a time of extreme uncertainty in the markets. I don't think banks are tightening up on availability of lending capital, we're just seeing different banks involved.

#### **Dubai has seen a resurgence of interest – does that impact Conyers?**

We've focused quite a bit of marketing firepower in Dubai – sending people there and seeing people we know – but we've no plans to reopen a local office. Dubai is a very different place compared to five years ago. There's a very significant amount of wealth there, particularly coming out of the Eastern Bloc, Russia, Asia, Hong Kong. We had a Dubai office for many years – we closed it, one of the first things I did as chairman. It was the right thing to do at the time.

#### **How has your London office changed?**

Our London offering has grown from four to 10 people. Many of our competitors have very significant London offices. We used to look at it slightly differently: it needed to stand on its own two feet as a source of new business. Our London office now works hand-in-hand with each of our jurisdictions. We view the practice not as the London office in a silo, but as having lawyers there who individually have expertise in one jurisdiction.

The people we have there are really good, known to the market, and they're getting out there and winning work. They've also become more of a referral source. It's working well – a nice story to tell on the 25th anniversary of the London office.

#### **Unlike some offshore firms, Conyers has kept its fiduciary business. Any plans to change that?**

Every successful offshore firm has been built on the backs of successful corporate admin businesses. It provides a very lucrative annuity. In what were historically high-margin businesses, it's interesting what happens when you take it away and what that does to an organisation. When firms sell those businesses, there is high risk in the future of the firm. You might have a success story and be able to rebuild your corporate services business, but you risk alienating younger up-and-coming teams within your firm. It is difficult to rebuild and depends heavily on market factors in play. We're not looking to sell our business.

#### **What are your priorities for the next year?**

We continue to focus on improvement and growth – incrementally growing in Cayman, on our insurance product in Bermuda, which goes from strength to strength, 40-50% of that market. One strategic objective is to support Bermuda as a jurisdiction in any way we can, because where Bermuda goes, our Bermuda office goes. In BVI, we're developing some new product lines, putting more emphasis on regulatory work, continuing to offer more sophisticated product for clients and a suite of corporate offerings there, leaving aside our already well-developed litigation practice, which will continue. ●

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## About us

Reports Legal is managed by Dominic Carman and James Air, both of whom have considerable experience in these markets. In recognising that most legal publishers now operate behind a paywall, they decided that everything published by Reports Legal will be free for lawyers to access online. There is no paywall.

Dominic has been involved in legal publishing for 30 years in London, New York and Hong Kong. A regular media contributor, he was a legal feature writer for *The Times*. Dominic undertakes diverse projects for international law firms, speaks at events, and judges the British Legal Awards and the Legal Week Innovation Awards. See more about Dominic on [LinkedIn](#).

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