

fivehundred

The inside track on what makes the world's elite law firms successful



Pace of change

The Legal 500 analyses its historic UK Offshore rankings



Law is a beach?

Which law firms lead across the Caribbean market



Focus on...

Appleby



“The Carey Olsen team is truly first class.”

THE LEGAL 500

 25

We work with all of the world's top 25 law firms.

 1st

We have 18 Tier One rankings in *The Legal 500 UK* – more than any other offshore law firm.

cUS\$100bn

We advise the SoftBank Vision Fund – the world's largest ever investment fund.

 100

We advise more LSE-listed clients than any other offshore law firm.

 10/10

We advise all of the world's top 10 private equity firms.

 1st

We advised on the launch of the world's first regulated, crypto-denominated fund.

 No.1

We are the leading adviser for listings on The International Stock Exchange.

 Asia Legal Awards

Shortlisted for Offshore Law Firm of the Year – Asia Legal Awards 2019.

 10/10

We advise all of the world's top 10 banks.

OFFSHORE LAW SPECIALISTS

BERMUDA BRITISH VIRGIN ISLANDS CAYMAN ISLANDS GUERNSEY JERSEY
CAPE TOWN HONG KONG LONDON SINGAPORE

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Introduction



Offshore jurisdictions play a key role in the global economy, from providing neutral territory for international investment, and secure structures where personal and collective wealth from across the world can grow with the global economy but protected from domestic politics, and often deployed in ways that creates returns and security for investors and real social impact.

The offshore world has responded to public challenges and the blurring of the offshore and onshore worlds. In this, *fivehundred's* first special regional supplement, we deep dive into the offshore world to reveal the latest news, trends, and best practice developments, stepping outside the hall of mirrors to see how these jurisdictions add real value for global law firms and their clients.

We begin from a global perspective, with Appleby's Jeffrey Kirk explaining legal innovation from an offshore firm angle (page 16); Ogier's Katrina Edge on why a strategy of 'getting to the point' is a must to service the modern client (page 42); while Carey Olsen's Michael Padarin in Hong Kong explains why you should think quality over quantity when it comes to client interactions (page 24).

From Jersey, Maples partners Paul Burton and Simon Hopwood highlight the features of Jersey holding companies that are attractive, from a global private equity acquisition and structuring point of view (page 60), and Jersey Finance's CEO, Joe Moynihan, talks about the evolution of family offices (page 54).

Meanwhile, Dr Andy Sloan, chair of Guernsey Green Finance, outlines the Channel Island's role in tackling climate change through the breadth of financial services (page 72); Dominic Wheatley, chief executive of Guernsey Finance, reveals new research on a specialist development for Guernsey (page 68); and Ferbrache & Farrell's Gavin Farrell debunks any suggestion that the offshore world is still a shady place (page 30).

Sticking with the Channel Islands, I explore the history of the Channel Islands' legal market, highlighting which offshore firms have historically obtained the best rankings in *The Legal 500* (page 48), as well as looking at the speed of change in the Isle of Man's legal market (page 76). Speaking of the Isle of Man, Advocates Smith Taubitz Unsworth brief us on regulatory developments in the Crown Dependency (page 80).

Turning to the Caribbean, McKinney Bancroft & Hughes' senior partner, John F. Wilson, reveals what gives his firm a competitive edge (page 36). And last, but not least, Caribbean editor Amy Ulliott deep dives into the last five years of *The Legal 500's* Caribbean rankings to discover which international and domestic firms come out ahead across some of the world's most lucrative offshore jurisdictions, as well as highlighting some key market trends found there (page 6).

We hope you enjoy this offshore special and remember to look out for more country and regional-specific supplements in the ahead months.

Will Tolcher
Deputy editor, Offshore

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The biggest challenge facing the offshore world is politics, says Gavin Farrell, advocate and partner at Ferbrache & Farrell



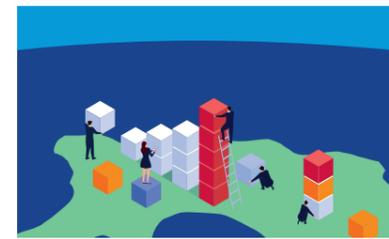
Timely, efficient, and excellent client service is a competitive advantage, says John F Wilson, senior partner at McKinney Bancroft & Hughes



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What used to be a private office set up to deal with a wealthy family's investments is now more complex and exciting than ever before, says Joe Moynihan, CEO, Jersey Finance



Jersey holding companies are attractive from a global private equity acquisition and structuring perspective, explain Maples partners Paul Burton and Simon Hopwood



Dr Andy Sloan, chair of Guernsey Green Finance, says Guernsey is at the forefront of the global finance movement on climate change



Guernsey is well-placed to service the growing trend for attracting and securing private capital investment, says Dominic Wheatley, CEO of Guernsey Finance



There must be mutual confidence and respect between industry and the regulator to achieve good compliance across the board, say Advocates Smith Taubitz Unsworth



The Bahamas, Bermuda, BVI, and the Cayman Islands are under the microscope as Caribbean editor Amy Ulliott analyses the last five years of Caribbean rankings



What are the differences between the Jersey and Guernsey legal markets? Deputy editor Will Tolcher explores the Channel Islands' history for the answers



Will Tolcher considers whether the duopoly in Isle of Man's legal market is under threat



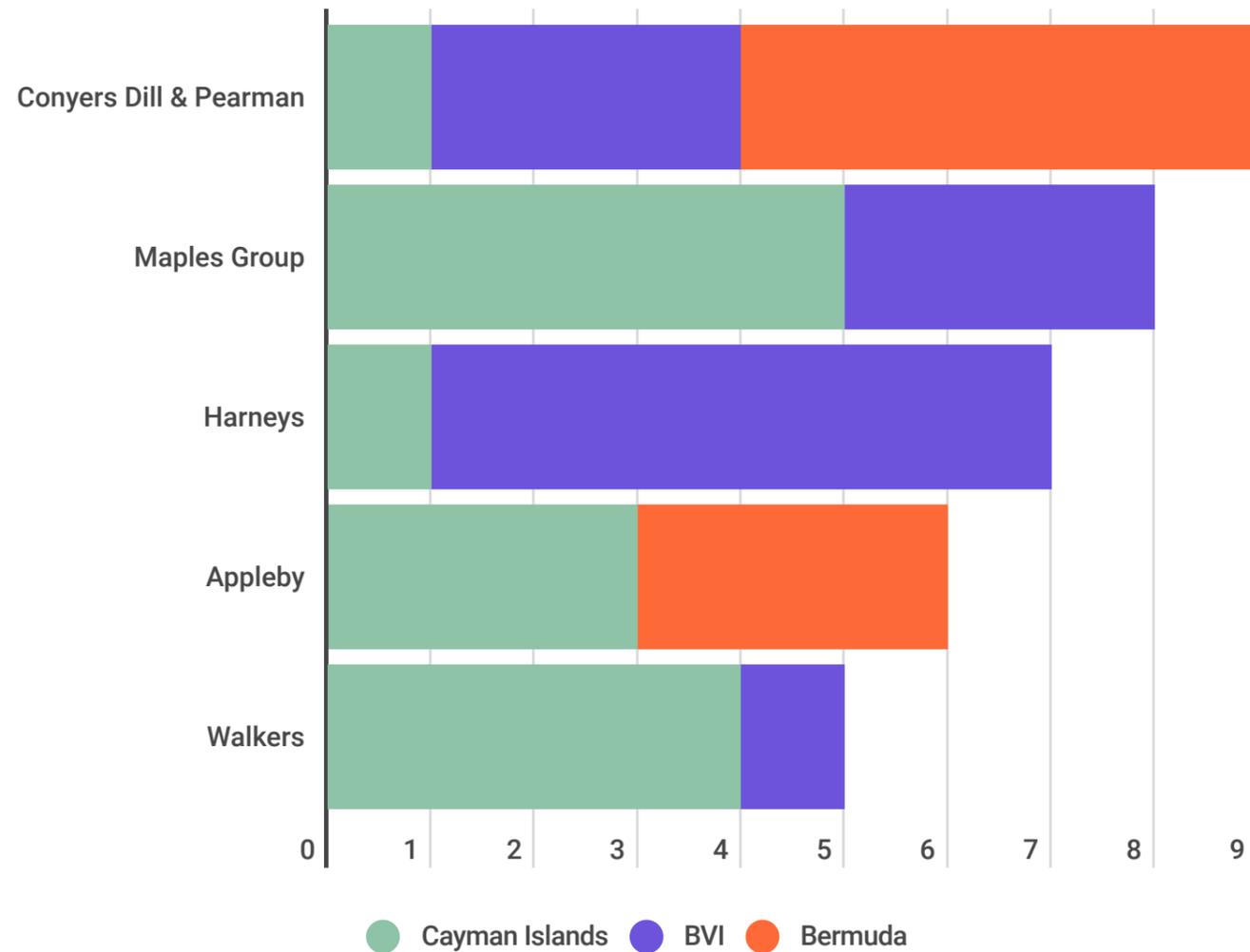
Law's a beach, in the Caribbean

Editor Amy Ulliott deep dives into the last five years of *The Legal 500's* Caribbean rankings to discover which firms come out ahead across some of the world's most lucrative offshore jurisdictions, and highlights some key market trends

The Caribbean legal market is unlike most others in the world. The lucrative offshore jurisdiction remains a draw for international companies and foreign individuals looking to benefit from the region's business-friendly regulations, and local markets are increasingly dedicated to moving away from the region's reputation for secrecy following the increased scrutiny of the offshore world. This is most notably reflected in the efforts by law firms to expand their regulatory practices in line with global developments and ensure their clients are compliant with the substantial increase in legislation and regulation, most notably the new economic substance rules.

The Caribbean guide was introduced into *The Legal 500* coverage in 2009 and, following substantial expansion across the 2018 and 2019 editions, the guide now covers the Bahamas, Bermuda, the British Virgin Islands (BVI), and the Cayman Islands. While the jurisdiction is often closely linked with the UK offshore market (for obvious reasons), our coverage evaluates local firms alongside global offshore practices to provide a comprehensive evaluation of what the whole market has

Top five firms by number of tier 1 rankings (2019)



to offer. This article will cover each jurisdiction independently, looking at each legal market and the firms operating within them.

The Bahamas

The newest jurisdiction to be added to *The Legal 500's* Caribbean guide with rankings established in the 2019 edition, the Bahamas attracts substantial international investment and has forged notable relationships with international financial institutions and investment

funds. The jurisdiction also benefits from its status as a tax-neutral jurisdiction and position as the second highest per capita GDP in the English-speaking Caribbean. Made up of over 700 islands, the tourism sector is the main contributor to the country's success, accounting for roughly 60% of the national GDP. The impact of Hurricane Dorian continues to be felt, but hopes are high that tourism will encourage the recovery of Grand Bahama and the Abaco Islands, the two regions most affected by the natural disaster.

Nassau is the main legal centre in the jurisdiction, with firms also having outposts in Freeport on Grand Bahama and Lyford Cay on the west point of New Providence Island. The inaugural ranking, which reflects the overview of the market, is comprised of solely local firms with four full-service outfits currently holding the tier one position. Graham Thompson, Higgs & Johnson, Lennox Patton, and McKinney, Bancroft & Hughes make up the top tier with their Bahamas offices acting as a main base for the firms; several of the firms also have a wider Caribbean presence with Grant Thompson having an office in Turks & Caicos, Higgs & Johnson establishing itself in the Cayman Islands, and Lennox Patton opening a BVI office.

Bermuda

Bermuda stands out as a leading centre in the Caribbean for insurance work, with more insurance-linked fund managers than any other jurisdiction. The country has also become a key region for fintech companies with many funds investing in insurtech and blockchain technologies; funds are also expected to become increasingly active in the cannabis space following a recent decision to lift a regulatory ban on marijuana investment funds.

The EU's unexpected decision to place Bermuda on the blacklist of global tax havens in March 2019 initially impacted the country's

reputation, however, further potential for stricter controls ultimately never fully materialised as the EU's decision was reversed two months later. The global move towards transparency, stemming from incidents such as 2017's Paradise Papers, has also led to regulatory changes including the new economic substance legislation implemented in early 2019. The act was introduced following the EU Council's Code of Conduct business taxation resolution and requires businesses in certain industries to demonstrate adequate economic substance in Bermuda.

For the region's international offshore firms, Appleby and Conyers have long been established in the market and have consistently received the most rankings in *The Legal 500's* coverage, both in terms of overall number of rankings and the highest number of tier 1 rankings across practice areas. However, some suspect this consistent success (and potential complacency) has led to opportunities for other firms to enter the market and shake up the status quo. Walkers and, more recently, Carey Olsen have both set up bases in Hamilton in recent years (the latter making substantial hires in the last 12 months), making their mark in a traditionally stable offshore market.

At a local level, MJM, Wakefield Quin, and Cox Hallett Wilkinson are all in the mix, competing alongside

the offshore firms for the highest number of overall Bermuda rankings. However, generational change and succession issues are increasingly impacting Bermudian firms including MJM, Cox Hallett Wilkinson, and ASW Law, although current outlooks seem positive.

British Virgin Islands

The BVI is a key location for registering companies offshore, which in turn benefit from the jurisdiction's tax benefits, user-friendly legal framework, and facilitative market for cross-border transactions. While the favourable tax and business approach to companies has not always played to the BVI's favour (the majority of the companies exposed in the Panama Papers were registered in the BVI), the country is pushing away from its 'secrecy jurisdiction' label and demonstrating its commitment to transparency and compliance. Most recently, it has adopted the Economic Substance Act 2018, which was followed by a supplementary draft Economic Substance Code, published by the BVI International Tax Authority.

The jurisdiction also continues to weather the storm of Hurricane Irma (a topic covered in the April 2019 edition of [fivehundred](#)) with the tourism sector steadily recovering and rebuilding efforts fully underway. Although the impact of the hurricane on the legal market may have exacerbated the island's ability to retain talent (BVI firms are increasingly having to turn to London for recruitment rounds), the legal market has also seen successes

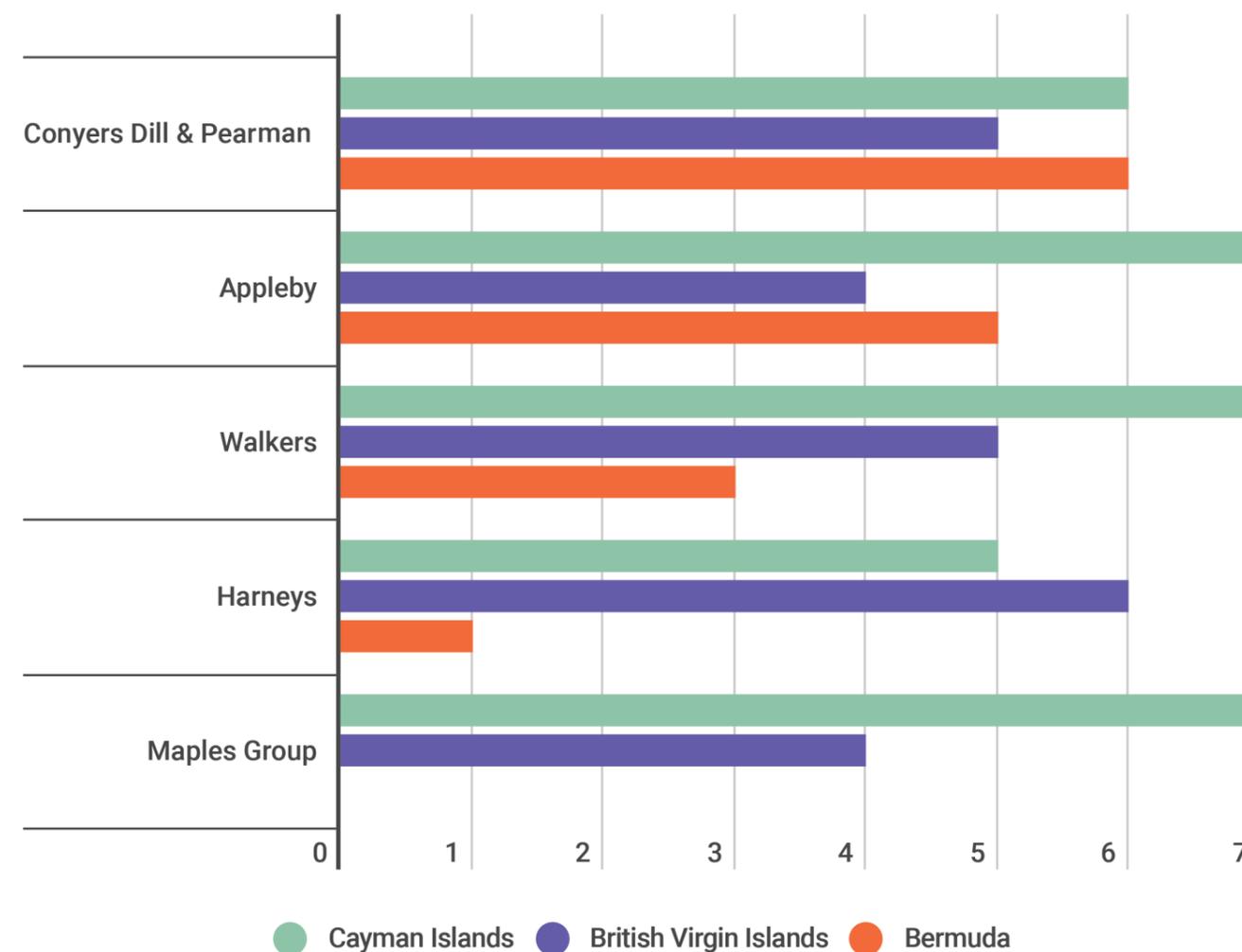
despite the disaster, with Collas Crill continuing to make notable investments into the islands following its merger with local firm Farara Kerins in 2017.

In the wider offshore market, Harneys, Walkers BVI, Conyers, Appleby, Ogier, and Maples Group all have a notable presence in the jurisdiction, with Harneys regularly leading the pack for overall firm rankings and tier 1 positions. On the local side, O'Neal Webster is the strongest domestic firm across the board, with a ranking in every practice area covered in our research. Other local firms of note include Price Demers & Co and Campbells.

The Cayman Islands

Arguably one of the most stable markets in the Caribbean, the Cayman Islands is a leading jurisdiction for investment funds with nearly 11,000 funds registered with the Cayman Islands Monetary Authority, the main regulator for the jurisdiction's financial services industry. Beyond that, the territory is increasingly prominent for digital technology and cryptocurrency work; the Cayman Islands Investment Group recently announced its plans for a cryptocurrency exchange. Outside of the financial services world, Cayman benefits from its position as a holiday destination, with the tourism sector being the other key pillar of its economy. The real estate market is also increasingly strong, with tourism driving further construction and developments.

Top five firms by overall number of rankings – 2019



Much like the other regions covered in *The Legal 500*, Cayman has been subject to the impact of the new economic substance laws, which became effective on 1 January 2019 and ensures the territory's commitment to the EU and its position as a member of the Inclusive Framework on BEPS (OECD's Base Erosion and Profit Sharing initiatives). In the context of *The Legal 500* rankings, at an international level, Maples Group and Walkers remain dominant across the region with Appleby rounding out the top three in third place for the number

of tier 1 rankings over the last five years; the three firms have been consistently evenly split for the number of rankings overall. Traditionally, Campbells has the strongest local offering, while Stuarts Walker Hersant Humphries and Solomon Harris (now Bedell Cristin following its merger in mid-2019) follow closely behind. However, for real estate work, local firms Ritch & Connolly and Bodden & Bodden regularly stand out beating out the majority of local and international firms alike in the real estate rankings. ●

Focus On... Appleby



Appleby is one of the world's leading international law firms. Their global teams of legal specialists advise public and private companies, financial institutions and private individuals.

They are a full service law firm providing comprehensive, expert advice and services across corporate, dispute resolution, property, regulatory and private client and trusts practice areas. They work with their clients to achieve practical solutions whether from a single location or across multiple jurisdictions.

They are regularly recognised for their professionalism, integrity and excellence, and these are the values they pride themselves on and are at the core of their business.

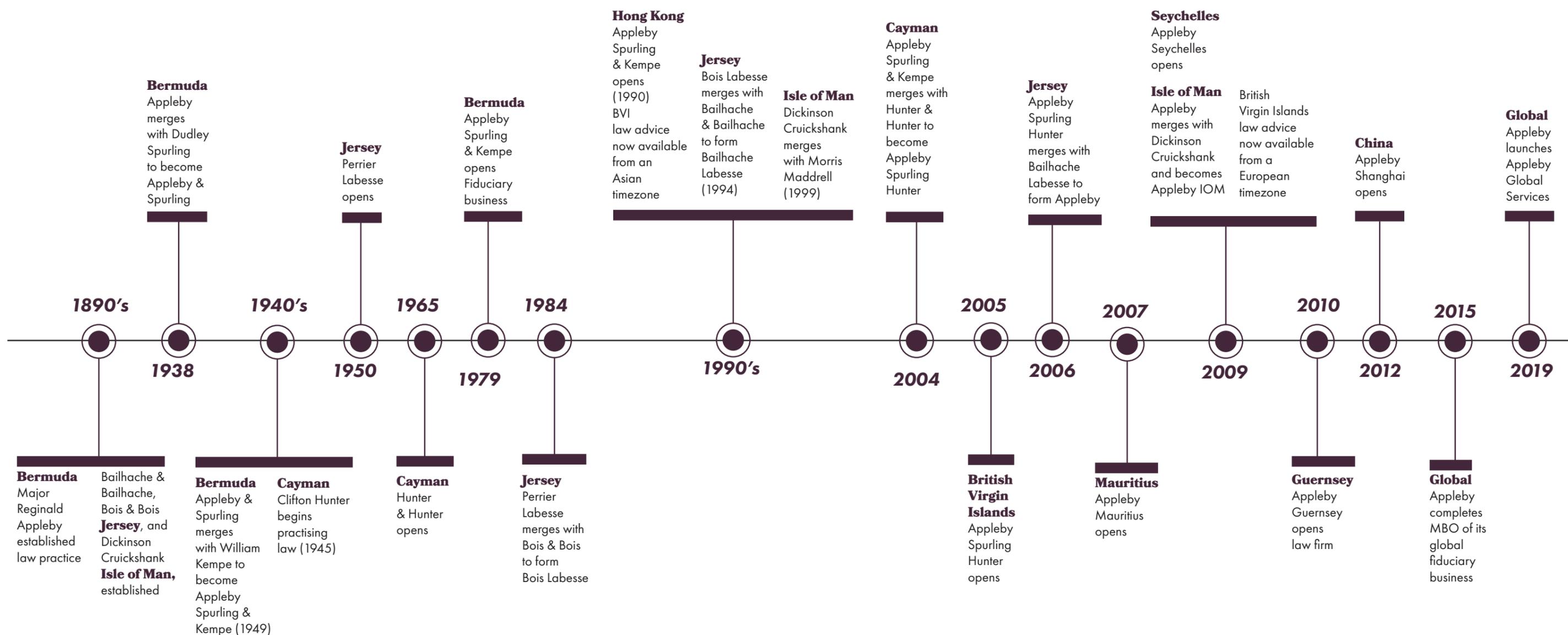
They operate in 10 highly regarded and well-regulated global locations. These include the key offshore jurisdictions of Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, Isle of Man, Jersey, Mauritius, and the Seychelles, as well as the international financial centres of Hong Kong and Shanghai. Their global presence enables them to provide comprehensive, multi-jurisdictional legal advice at the times most beneficial to their clients.

Key clients

Appleby acted as BVI counsel to:



Celebrating over 125 years in business



Interview with...

JEFFREY KIRK



Jeffrey Kirk, managing partner of Appleby in the BVI, on the ever greater numbers of young onshore lawyers making a permanent move offshore



MICHAEL PADARIN



Michael Padarin, Hong Kong-based head of corporate at Carey Olsen, explains why lawyers must think outside the square



FEBRACHE & FARRELL



The biggest challenge facing the offshore world is politics, says Gavin Farrell, advocate and partner at Ferbrache & Farrell



JOHN F WILSON



Timely, efficient, and excellent client service is a competitive advantage, says John F Wilson, senior partner at McKinney Bancroft & Hughes



KATRINA EDGE



Katrina Edge, head of Ogier's banking and finance practice in Europe and Jersey, on why offshore firms need a global approach





**Jeffrey Kirk:
We are consistently
innovative in our thinking**



What do you do differently from other offshore firms?

Our clients have always been at the core of our business and we believe that our global model helps support them, when they need us the most.

Our ability, where required, to draw on specialist expertise from our wider local and global network of practices to assist on individual client matters, or to resource larger matters with fee earners from other offices, enables us to consistently provide a strong and experienced team for our clients. We pride ourselves on our cross-jurisdictional collaborative approach that you may not see at other offshore law firms.

Our jurisdictional footprint including jurisdictions such as Mauritius, Isle of Man and Seychelles together with the more traditional offshore financial centres based in the Channel Islands and Overseas Dependent Territories of the UK give us a unique jurisdictional offering.

We also understand that the offshore and regulatory markets are changing and clients need information that is accessible and easy to digest. Economic substance is an excellent example of this, where regulatory changes are continuing to be implemented across a number of our jurisdictions. As well as sending client communications and delivering presentations and talks to educate them on these new requirements, we also developed an *Online Economic Substance Entity*

Classification Questionnaire, which offers clear and concise guidance through the economic substance regimes of Bermuda, British Virgin Islands (BVI), Cayman Islands, Guernsey, the Isle of Man and Jersey. In the first month alone, over 1,500 clients accessed our tool from over 70 countries.

What is your firm's approach to competition between offshore jurisdictions?

At Appleby, we don't view the different offshore jurisdictions as being in competition with one another. Our main focus is our client's needs. Our global presence enables us to provide comprehensive legal advice at the times most critical to them. This includes providing BVI law advice to clients in the Asian, North and South American, Caribbean and European time zones, from our BVI, Cayman, Bermuda, Hong Kong, Jersey and Isle of Man offices.

In addition, thanks to our local presence in the jurisdictions of Seychelles and Mauritius, we are able to offer advice on group structures involving companies incorporated or operating in these two Indian Ocean jurisdictions. This ability is increasingly attractive to clients in Mainland China, and puts us in a market leading position in the offshore capital markets space. We are also the only offshore law firm operating in each of the Crown Dependencies meaning the team are able to provide joined up support for our large banking and institutional clients across all three jurisdictions. So rather than

**JEFFREY KIRK****Phone: +1 284 393 5318****Email: jkirk@applebyglobal.com**

Jeffrey Kirk is the managing partner of the Appleby British Virgin Islands office and leads the BVI office Corporate Practice Group. He advises on public and private M&A, capital markets, banking & finance, investment funds & services, private equity, (re)insurance and other corporate matters. He is also the global head of the Appleby Islamic Finance Practice Group. Jeffrey has worked in the Appleby Bermuda, Hong Kong and BVI offices and has extensive experience advising on the laws of the BVI, Bermuda and the Cayman Islands.

seeing each offshore jurisdiction as competition, we believe our extensive offshore global network is one of our greatest collective strengths.

What does innovation mean to you and how can firms be better at it?

Firms must be adaptable and responsive to their client's needs; this includes changing processes and procedures and also having robust contingency plans in place for when the unexpected happens.

During Hurricane Irma for example, we had crisis management plans in place before this terrible storm struck. First and foremost we prioritised ensuring our colleagues and their families in the BVI were safe and once we were certain of this we were able

to turn our attention to ensuring our business continued to operate with minimal disruption to our clients. Corporate and Dispute Resolution Partners and associates were relocated to other jurisdictions during and after the storm and our business continuity plan was executed successfully, with client enquiries and communications to our BVI office being handled via our international network of offices, across a number of time zones. We also have numerous BVI qualified lawyers in other Appleby offices (including the Cayman Islands, Bermuda, the Isle of Man and Hong Kong). These lawyers have complete access to our BVI systems and were able to deal with existing matters and new instructions. In addition we are consistently innovative in our thinking with regard

to both the services we provide and the sectors that we cover. For example, we led the way amongst the offshore firms by establishing a Global Technology and Innovation (T&I) Working Group, made up of colleagues with a range of T&I specialisms to help support clients across a broad range of emerging technologies. The global group is recognised as a leading offshore practice in this fast moving sector.

How does your firm handle technology and data security? Has this become even more important following recent law firms hacks?

Information security is a part of our culture which emanates from the leadership team across the entire ambit of our whole business. In 2017 we appointed a Head of Information Security who oversees security across our network and is a recognised leader in this field.

Our Information Security systems and protocols are not limited to IT security but extend to facilities and individual security measures and our Information Security Team has helped us to achieve ISO27001 accreditation. The changes and security enhancements that we have implemented and the ISO27001 accreditation, are developments that we are incredibly proud of and we have communicated this to our clients.

Our systems have been reviewed and tested by two international cyber security teams. It is now a common feature for law firms to have their systems tested by external cyber teams. However, we are not aware of any competitor law firm having undertaken this testing twice by separate cyber security teams. This level of investment is indicative of our commitment and responsibility in securing our clients' data.

What does diversity and inclusion mean to you? and, is d&i more difficult offshore?

Our colleagues represent a wide range of nationalities, demographics, races, religions and cultures. With a global network spanning ten jurisdictions, we are an inherently diverse business and this is reflected at all levels, with colleagues of more than 30 nationalities globally. We pride ourselves on our inclusive approach which ultimately offers significant benefits to both our colleagues and our clients through improved organisational agility and local knowledge.

Women also make up more than half of the global Appleby team. Our diverse culture is also reflected in our leadership team in which a number of female colleagues together with colleagues from different ethnicities and orientations hold key leadership positions. Half of our managing partner roles and Directorships are held by women.

Gender is of course, only one measure of diversity and we take great care to ensure that all colleagues feel valued as individuals, with an equal opportunity to contribute.

What should young lawyers know about working offshore, compared to onshore?

It is important to emphasise to young lawyers that are considering making a move offshore that whilst such a move may result in a healthier work-life balance, the demands and work ethic in an offshore firm are often as demanding as a leading onshore law firm. A number of our qualified lawyers include those who have experience working in onshore financial centres and accordingly understand the demands faced by clients and intermediaries. As we work regularly alongside onshore law firms based in all the major financial centres including London, New York, Hong Kong, Shanghai and Singapore, this is a further benefit for our clients.

The benefits of a reduced work commute or the ability to take an early morning sea swim or surf before work must be balanced with the understanding that the offshore centres' infrastructure and cultural entertainment facilities will not rival that found in London or Hong Kong. It is important for any candidates considering making a move offshore to thoroughly research the jurisdiction

that they are contemplating moving to. Challenges related to, for instance, a lack of public transport and therefore the need to be a licensed driver; travel distances and time and cost it takes in travelling to the UK or other home jurisdictions; or infrastructure challenges such as WIFI connectivity, occasional intermittent power and the possibility of hurricanes in the Caribbean offshore centres must be recognised and accepted.

Notwithstanding these challenges, we see ever greater numbers of young onshore lawyers who have made the move offshore electing to remain offshore on a permanent basis. My belief is that this growth is driven by the quality, complexity and sophistication of the work coupled with the benefits of work-life balance, working in smaller teams with greater levels of interaction amongst all team members and greater autonomy and responsibility on the individual lawyer.

Offshore financial centres provide a crucial role in cross-border investment, finance and trade activities and will continue to do so in the future. This will in turn continue to require bright, technically strong and driven lawyers to service client needs in these types of transactions and corporate and commercial work. ●

CAREY OLSEN

The
LEGAL
500
 series

Michael Padarin: There's creativity in law

The Hong Kong-based head of Carey Olsen's corporate practice on why lawyers must continuously think outside of the square, why there is more to the offshore world than sun, sea, and palm trees, and why you should think quality over quantity when it comes to client interactions

What's the main change you've made in the firm that will benefit clients?

We've made two major changes recently, both of which will be of great benefit to our clients. The first main change has been the launch of our Hong Kong corporate practice. We were previously an insolvency, restructuring, and litigation practice only from our Hong Kong office. We now also have partners on the ground in Hong Kong with a great depth of experience in investment funds, corporate, banking and finance, and M&A. With these additional capabilities we can now provide our clients with the full range of legal support for contentious and non-contentious corporate deals from Hong Kong. We've also recently welcomed two experienced Bermudian





“Competition from the onshore world is probably our biggest challenge”

lawyers to our Hong Kong office, which means that in addition to our Cayman Islands and BVI legal services, we can also advise on Bermuda law matters from Hong Kong, both for contentious and non-contentious matters.

What does innovation mean to you and how can firms be better at it?

Many outsiders to the legal profession consider the practice of law to lack scope for creativity. In reality, lawyers spend their days looking for creative solutions to commercial problems, which means continuously thinking outside of the square. Innovation to me is an intrinsic part of how we approach complex legal issues and also deliver our service to clients. Law firms can be better at innovation by really understanding their clients’ critical business needs, and looking to evolve traditional practices to deliver legal services in a manner which is sensitive to these needs.

Automation of document production is a good example of innovation in delivery of services which saves time and reduces costs for clients. The adoption of AI technology in discovery processes

is also a great example of innovative technology being put to use for the benefit of clients.

What are the biggest challenges facing firms in the offshore world?

Competition from the onshore world is probably our biggest challenge. The recent introduction of economic substance legislation in a number of the offshore jurisdictions in which we operate is a good example – the legislation is intended to address EU concerns around the risks of profit shifting to entities in tax neutral jurisdictions. However, the net has been cast so wide as to potentially capture all types of offshore entities, even those that are not used in industries where harmful tax practices are a real issue. As a result of this legislation, we have seen corporate restructures taking place to eliminate some entities in the jurisdictions in which we operate, notwithstanding the entities may not be carrying on an activity which is deemed to be in a risky category. We also see a number of onshore jurisdictions creating structures that mimic typical offshore structures, such as the Singaporean variable capital company

and the Hong Kong open-ended fund company, which are intended to be direct competitors to the their offshore counterparts.

How does your firm handle technology and data security? Has this become even more important following recent law firms hacks?

Law firms are built on the premise of reputation and trust, and our clients expect all forms of information and communication to be handled securely and in confidence, particularly with technology and data security playing a critical part in facilitating Carey Olsen's ability to provide global legal services to our clients. We live in a world where technology is constantly evolving, but so too are the cyber threats that we all face. Within Carey Olsen, we continuously review and adapt our use of technology and security controls to determine how best to reduce the risks that we face. We adopt established technologies and security best practices such as those set out in the ISO/IEC 27001 standard. Our approach to security is based on the principle of defence in depth which applies layers of defensive controls and

1996 – 2001:
University of Technology, Sydney - Bachelor of Laws (LLB)

2001-2004:
Compliance Manager/
Legal Counsel at Zurich Investment Management, Sydney

2002: Admitted as a solicitor of the Supreme Court of New South Wales in 2002

2005 – 2008:
Senior Associate at Minter Ellison in Sydney

2006 – 2008:
University of Sydney - Master of Laws (LLM)

“There is a misconception that offshore lawyers spend their days happily swinging in hammocks somewhere within reach of the Caribbean Sea. In reality, we work in partnership with the world’s top onshore firms and need to be ever ready to respond to our mutual clients’ needs”

technologies to protect our data and systems from attack.

What is your firm’s approach to competition between offshore jurisdictions?

Global expansion has helped us to succeed in this era of intense competition amongst offshore jurisdictions. It also provides a perfect hedge to be able to compete in multiple jurisdictions and help to shape the regimes in which we operate. Carey Olsen’s approach to competition between offshore jurisdictions has been to ensure we have a viable presence in each of the key offshore jurisdictions, and also offices in regions where demand for offshore legal services is strongest (such as Asia). By doing this, we can be impartial in the structuring choices we offer our clients, which guarantees the best outcomes.

What do you do differently from other offshore firms?

Particularly in a saturated and cost sensitive offshore market such as Hong Kong, there is a temptation for firms to ‘buy’ legal work, through taking on engagements for next to nothing as a loss leader for future work streams. We have been careful to emphasise the

quality of our product above all else. We seek to establish ourselves as a trusted advisor to clients, with an experienced team able to handle the most complex engagements. We see ourselves as specialists in our respective fields, and are not seeking to be everything to everyone.

What should young lawyers know about working offshore, compared to onshore?

There is a misconception that offshore lawyers spend their days happily swinging in hammocks somewhere within reach of the Caribbean Sea. In reality, we work in partnership with the world’s top onshore firms and need to be ever ready to respond to our mutual clients’ needs. This generally means working at least as hard as our onshore colleagues, and often working on a great many more matters at any one time. The life of the offshore lawyer is a constant juggle which is often not appreciated by young lawyers contemplating a move offshore.

With the world becoming smaller, but possibly more divided, how does your firm manage this paradox?

We are a relatively small firm with a very diverse client base, both in terms of

industry sectors and also geographies. There is a tendency for offshore firms to spread themselves too thin trying to manage relationships with clients through face-to-face meetings, often in multiple cities, whilst also managing work flows and teams back in the office. We’ve taken a quality over quantity approach to client interactions through emphasising the importance of online tools to distribute timely legal information that clients find relevant to their businesses.

What advice would you give to the next generation of partners ready to rise the ranks?

The importance of making strong connections within your firm cannot be overemphasised. Building strong and open relationships really helps to navigate the internal politics common to many firms, and also provides a network of specialists one can call on for technical support on tricky deals. Find a senior mentor who you respect and who respects you. Younger partners will also need to find ways to bridge gaps with older partners from different generations that communicate differently to them and their peers. ●

2008 – 2019:

Joined Walkers and progressed to the position of partner in 2012. Worked for the firm in its Hong Kong office until 2012 before moving to the Cayman Islands office in 2012

2012: Admitted as a solicitor of the Supreme Court of England and Wales, a solicitor of the Eastern Caribbean Supreme Court of the British Virgin Islands, and as an attorney-at-law in the Cayman Islands

June 2019: Joined Carey Olsen as corporate partner in its Hong Kong office



Gavin Farrell: The offshore world is still a shady place? Just not true

Ferbrache & Farrell advocate and partner talks about unfair perceptions, cybersecurity and innovation, and working in a family minded partnership





What's the main change you've made in the firm that will benefit clients?

We have tried to change and adapt to the constant evolution of technology, whilst maintaining our traditional partnership ethos (based on the collective of all our individual members of our team of just under 20 people). Those changes have seen us adopt logistical support and communications, a new IT structure and platform, a cloud-based environment whilst ensuring that clients do not feel institutionalised or corporatised in a sanitised environment. In addition, whilst we have doubled in size in the last three years, this change has not been at the expense of our collegiate and client-focused culture.

What does innovation mean to you and how can firms be better at it?

Innovation covers both the type of work that we do and the way in which we do it. Innovation has a direct impact in the type of

corporate and commercial work that we do since structures are being set up both in an innovative manner and to deal with new asset classes (from ICO, crypto currencies to tech companies etc.). Innovation also affects our infrastructure which requires an understanding of evolving technology since our clients will expect us to be up-to-date and to deliver to them in a way which is commensurate to their requirements and own infrastructure.

What are the biggest challenges facing firms in the offshore world?

In addition to the macro economic situation the whole world is facing, the biggest challenge we face is politics, in that there is a perception that the offshore world is still a shady place consisting of tax havens and palm trees where money is secretly stashed away by bad people. This is untrue and particularly unfair since Guernsey adheres to all (and at times more than) the

international standards to ensure that we are fully tax transparent and only deal with legitimate business. There is also an increased degree of competition from onshore jurisdictions who, whilst criticising us, are trying to provide solutions that are traditionally provided for by the offshore world.

How does your firm handle technology and data security? Has this become even more important following recent law firms hacks?

As a smaller, but nimble, boutique law firm, we as partners and staff are not burdened by a heavy infrastructure and are therefore a lot more agile to know, understand, and deal on a time critical basis with any client issues relating to technology and data security. In addition, some of our partners who advise professionally on legal issues surrounding data protection and technology have been rightfully appointed as the persons leading the projects and the oversight. We apply the highest standards of cybersecurity and ensure that any issue is dealt with effectively as a team effort.

What is your firm's approach to competition between offshore jurisdictions?

We are (and possibly are the only) commercially led full-service boutique law firm which is solely Guernsey owned and based. To that extent, we are not jurisdictionally



1992:
Law Tutor and Lecturer
(London Guildhall
University)

1994: Solicitor
(England) and Avocat
(Paris)

2002: Advocate
(Guernsey)

2003: Partner
Ozannes

2016: Partner
Febrache
& Farrell LLP



agnostic and our first approach is always to try and provide Guernsey as the first choice or preferred solution to our clients' needs. If Guernsey is not the most appropriate jurisdiction, we then suggest the partners we work with in the other offshore jurisdictions.

What do you do differently from other offshore firms?

As mentioned above, we believe we are different since we are the only boutique commercially led practice in Guernsey with partnered relationships in other major offshore jurisdictions. Whilst we are fiercely and unashamedly proud of being an independent Guernsey practice we can provide a seamless level of services across more than one jurisdiction. Where we also differ is the traditional partnership culture as led by our founding partners operating within a flat team structure and maintaining close relationships

with clients. We thrive on becoming trusted advisors to clients on both the professional and personal levels. We also operate on a minimal infrastructure which means that our fees do not include a disproportionate and unnecessary high level of costs to be recovered from clients.

What have you found is the best way to recruit and retain talent?

As a start-up, which is now soon to be three-years old, we have had a blank sheet of paper and can only develop as a practice. The best way to recruit and to retain talent is to offer a growth potential for people to thrive in their independent capacity within our team structure. All members of our practice are intricately linked to the success, growth, development, and future of this newly established practice.

What should young lawyers know about working offshore, compared to onshore?

Traditionally, offshore lawyers would tend to need a good mixture of general practice, as well as a high level of expertise in certain specified areas. What an onshore lawyer cannot expect when coming to Guernsey is to be highly specialised in one narrow field. What an onshore lawyer can expect is a very good combination of varied corporate, commercial, asset management, and banking work dealing with a high variety of clients, either directly or through onshore instructing counsel. In addition, the level of involvement and client interaction is possibly greater at a more junior level than that usually afforded to onshore lawyers.

What has been your greatest achievement, in a professional and personal capability?

I believe my greatest achievement, mixing both my professional and personal capability, was the establishment with three like-minded friends of our practice three-years ago. We believe our practice mixes our individual characteristics together with professional aptitude, therefore, retaining a high level of services within a family minded partnership environment. ●



THE LEGAL 500 VIEW

BANKING AND FINANCE - RANKED: TIER 2

Gavin Farrell and associate **Natalie Le Cras** are key names at **Ferbrache & Farrell LLP**, which handles a range of cross-border lending work including private fund finance; frequently representing borrowers. Restructuring is another area of expertise.

CORPORATE AND M&A - RANKED: TIER 3

The 'well-respected' **Gavin Farrell** is the main partner in a team which handles on-island deals, work for private equity and complex corporate work - he typically works with senior associate **Natalie Le Cras**. While the firm is only present in Guernsey, it is popular for inter-island referrals from Jersey's independent firms.

INVESTMENT FUNDS - RANKED: TIER 3

Ferbrache & Farrell LLP handles a range of fund formation and advisory mandates, covering both private funds as well as open-ended funds work. **Gavin Farrell**'s team has a strong following among Norwegian managers, and also advises US university endowments. **Natalie Le Cras** is the key senior associate.



John F Wilson: We have a culture of efficiency

Senior Partner John F Wilson discusses why timely, efficient, and excellent client service is his firm's competitive advantage





JOHN F WILSON

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“The introduction of value added tax in The Bahamas has resulted in a paradigm shift in how The Bahamian government raises revenue and this has resulted in an entirely new practice area”

What do you see as the main points that differentiate McKinney, Bancroft & Hughes (MBH) from your competitors?

Firstly, responsiveness. All of our lawyers are under strict directives to respond to every client email within 24 hours. We can say we have excellent attorneys, while we believe our attorneys are the best in the Bahamas, other firms also have excellent attorneys, but it is our responsiveness that sets us apart from our competitors.

Secondly, we have a culture of efficiency. MBH has provided world class legal solutions since its formation in 1945, and we continue to do so aided by our Association with Lex Mundi the leading network of independent law firms.

Which practises do you see growing in the next 12 months? What are the drivers behind that?

Tax and trade and trust and private client practice groups. Tax and trade: the introduction of value added tax in The Bahamas has resulted in a paradigm shift in how The Bahamian government raises revenue and this has resulted in an entirely new practice area.

There is a significant amount of work to be done in assisting clients to navigate the new landscape.

Trust and private client: with the recent changes in how international financial centres operate, ushered in by the initiatives implemented by various multinational bodies,

a generous amount of work is being created in dealing with issues such as registers of beneficial ownership, legislative substance requirements and base erosion and profit sharing legislation. Ultra High Net Worth individuals will now need lawyers adept at navigating this landscape.

What's the main change you've made in the firm that will benefit clients?

MBH recently re-launched its website which widens our outreach to clients and offers a better opportunity to manage market ideals while making more information available to our client base. By providing a more user-friendly platform we have leveraged this medium to better inform clients and meet their needs.

Is technology changing the way you interact with your clients, and the services you can provide them?

Absolutely, it provides us with the opportunity for connective thinking. As a firm we have certainly embraced technological advances to transform our service platform in a way that makes for better interaction with clients, and we have also capitalized on the way in which technology has improved productivity.

Our firm operates on a bank of connected databases and we have always utilized technology to grow and maintain the links of service between our several offices in Nassau New Providence, Freeport Grand Bahama and in Lyford Cay. This day-to-day use of technology has



also proved useful in providing efficiency to clients we serve in various time zones and markets. MBH has recently taken advantage of practice management and knowledge management software, keeping our practitioners accountable and significantly improving productivity. However, the most impactful and rewarding enhancement to client interaction which we have seen is with the use of social media to transform our customer relationship management.

Can you give us a practical example of how you have helped a client to add value to their business?

This is certainly a forte of our strong team in the Trusts and Private Client practice comprising of diverse legal backgrounds and years of experience in complex commercial litigation and wealth management advice. A ready example of our innovative solutions-based service to clients can be found in our service to a longstanding family owned group of entities which include the largest local retailers in the pharmaceutical business and manufacturers/wholesalers of home improvement supplies and construction materials, with a combined net worth of \$150 million. The recent restructuring of this group of entities for tax



efficiency and wealth management purposes prepared the group for, and optimized its value in the wake of, the implementation of a new tax regime in The Bahamas.

Are clients looking for stability and strategic direction from their law firms? - where do you see the firm in three years' time?

Yes I certainly believe so. Recent transitions at MBH have proved that stability and strategic direction is imperative for most clients. We have always provided long-standing contributions to the legal profession. As one of the oldest law firms in the Bahamas having been established in 1945, our founding Partners and many of our practitioners who have

led the profession at the Bar, have gone on to make stellar contributions to the Judiciary. This has meant that MBH has had to maintain client confidence in the stability provided by experienced and competent legal minds by offering premium efficiency and excellence with innovative and strategic thinking. The ability to manage client's expectations while delivering quality service, will position the firm over the next 3 years to smoothly transition while appealing to a younger more demanding client demographic. ●

**Katrina Edge:
Our focus on innovation,
collaboration and flexibility
is a key differentiator**

Katrina Edge, head of Ogier's banking and finance practice in Europe and Jersey, on why offshore firms need a global approach

What's the main change you've made in the firm that will benefit clients?

Our focus is on delivering market-leading client service by being the most advanced offshore firm in digital service delivery and innovation. We have rolled out an award-winning, cross-jurisdictional initiative to streamline our transaction processes, promote a culture of continuous improvement and ultimately deliver a better client experience.

As part of this firm-wide infrastructure investment and development programme, we train all employees in process-mapping skills. This involves our legal teams working alongside our dedicated service innovation team to streamline and refine the way that client work is undertaken, to deliver a more efficient, consistent and transparent service for clients. This means clients know exactly what to expect from us and when.



“Offshore firms need to have a global approach to their businesses”

What does innovation mean to you and how can firms be better at it?

I think it's all about approach. The delivery of legal services has changed, with clients wanting concise commercial advice. In essence, "is this an issue or not?".

Our strategy of "getting to the point" has embraced that – as the work gets more complex, it becomes even more important to give straight, commercial advice that cuts through the complexity and legal jargon. We have invested heavily in training our teams to support this ethos to ensure a consistent approach at all levels.

What are the biggest challenges facing firms in the offshore world?

The market is only going to get more competitive, meaning experience and a commercial approach is going to become even more important (particularly as regulatory pressures and deal complexity increases). At the moment there are in the region

of 50 offshore law firms, but I anticipate that as the deals become more complicated and increasingly cross-border, we will see increased consolidation in our markets.

Offshore firms need to have a global approach to their businesses. Our focus has for a long time been an "international" one - for example we were the first "offshore" firm to open an office in Luxembourg, and we also have teams in Hong Kong, London, Shanghai and Tokyo. I expect this to be a continued area of focus as client bases become increasing global.

What do you do differently from other offshore firms?

In addition to our focus on delivering commercially focused advice to clients in a transparent and efficient way, our culture of innovation, collaboration and flexibility is a key differentiator.

We have invested heavily in employee engagement and well-being projects. For



KATRINA EDGE

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Katrina Edge is the head of Ogier's Banking & Finance practice in Europe and Jersey, which maintained its top tier ranking in the recently released Legal 500 UK 2020 Directory.

Katrina is a leading offshore finance lawyer. Qualified in three jurisdictions, she has been a partner at Ogier since 2013.

With particular expertise in secured lending, fund financing, property financing and restructuring transactions, Katrina also has extensive experience advising on the establishment, acquisition and disposal of real estate holding structures.

Katrina specialises in large and complex cross border transactions and has advised on some of the largest mandates in the market – for example the record-breaking purchase of London's "Walkie Talkie" building.

Clients say Katrina "can be relied upon to provide clear, concise and practical advice", while others add that "she's excellent - extremely user-friendly and very responsive", "she's got a brilliant mind" and "demonstrates a clear understanding of what clients need".

our teams, we place great emphasis on supporting people to be the best version of themselves at work.

We have opened a conversation around what it means for our people, and how we can support them to be extraordinary.

What have you found is the best way to recruit and retain talent?

In terms of attracting talent, it's all about being open and specific about what we offer. Our employer brand focuses on tangible things – we support flexible working and provide the technology to enable that, we also talk about how we're technology focused, and practice an "open from day one" approach – you don't need to wait until you're at a senior level to

“It's important that diversity and inclusion translates into action - concrete policies that are well thought through”

feed your ideas up. It's ultimately about respecting and supporting the individual, and treating people like grown-ups - feedback from new recruits shows that it really resonates. And then to retain talent it's all about ensuring that you deliver on those promises - proactively supporting people and their work/life balance, genuinely supporting and enabling agile working and flexibility, and making sure everyone has a voice.

What should young lawyers know about working offshore, compared to onshore?

There was a perception when I moved offshore from the City that offshore work was repetitive and narrow in focus. This is certainly not the case, in my experience offshore lawyers have exposure to a wide variety of high value and high profile transactions, my practice for example requires me to advise on local and global financing transactions (involving multiple asset classes), corporate transactions and restructuring and insolvency deals. Structures are becoming more complex, as is the advice we are required to give. To me working offshore provides an opportunity for a more rounded and varied career than may be on offer in some parts of the onshore market.

What advice would you give to the next generation of partners ready to rise the ranks?

It goes back to this question of approach – it's not just about being technically excellent (that's expected) – lawyers looking to rise through the ranks also have to be leaders, they have to be communicators, they have to be project managers and they have to have relationship skills, and to be able to see the bigger picture. And commerciality is key.

What does diversity and inclusion mean to you? And, is D&I more difficult offshore?

It's important that diversity and inclusion translates into action - concrete policies that are well thought through. For example, as a firm we've fully embraced agile working, which is a great thing.

Ogier has a genuine collaborative ethos. There's a real recognition here that all our employees have views and ideas about how to do things. It's important that we all remember that our own perspective is not the only one. From their first day in the office, no matter what their role or team, we genuinely want to hear different voices – they shape how we do things. ●

THE LEGAL 500 VIEW KATRINA EDGE

Katrina Edge is a leading individual within Jersey: banking and finance.

Banking and finance - ranked: tier 1

Ogier handles the range of finance work to be expected of a top-line Jersey firm, covering top-of-market fund finance deals, large offshore real estate deals and complex, sensitive restructurings. Katrina Edge advises leading real estate funds on large deals, while Simon Felton handles complex restructurings and some deals concerning transport finance. Bruce MacNeil handles some of the largest fund finance mandates in the market. Clients praise Julia Keppe, who was promoted to managing associate in February 2019, a year after joining from Debevoise & Plimpton LLP.

Practice head(s): Katrina Edge; Simon Felton

TESTIMONIALS

'What sets Ogier apart is its commitment to client service - as well as being technically on the money, its assistance in bringing deals to a conclusion is invaluable.'

'Katrina Edge and her team are well-known in finance circles in London and are on the panel of most of the banks.'



Jersey and Guernsey: A friendly rivalry

Will Tolcher explores the history of the Channel Islands' legal market and highlights which offshore firms come out ahead in *The Legal 500's* decade worth of rankings

Although sharing elements of a common history, Jersey and Guernsey are two distinct jurisdictions, separated by 28km of water, with different legal systems and bar admissions. Due to their separate legal history – with a strong infusion of historic Norman law creating a few unique points compared to the law of England and Wales – the mechanism for qualifying as a Jersey or Guernsey advocate requires specific study, unlike admission in the Cayman Islands.

Notably, in litigation, there is no method for bringing in English counsel such as in the reasonably permissive BVI or even the more restrictive Isle of Man, which has a system of temporary advocates' licences. The Bailiwick of Guernsey also includes the smaller partially self-governing islands of Alderney and Sark, the former an online gambling hub and the latter, while small, having some degree of economic activity.

Despite a friendly inter-island rivalry, the islands cooperate on several levels, with many businesses crossing both jurisdictions. Law firms are no exception, with the past ten years seeing a period of market consolidation that has created both inter-island and transatlantic offshore firms.

“Despite a friendly inter-island rivalry, the islands cooperate on several levels, with many businesses crossing both jurisdictions”

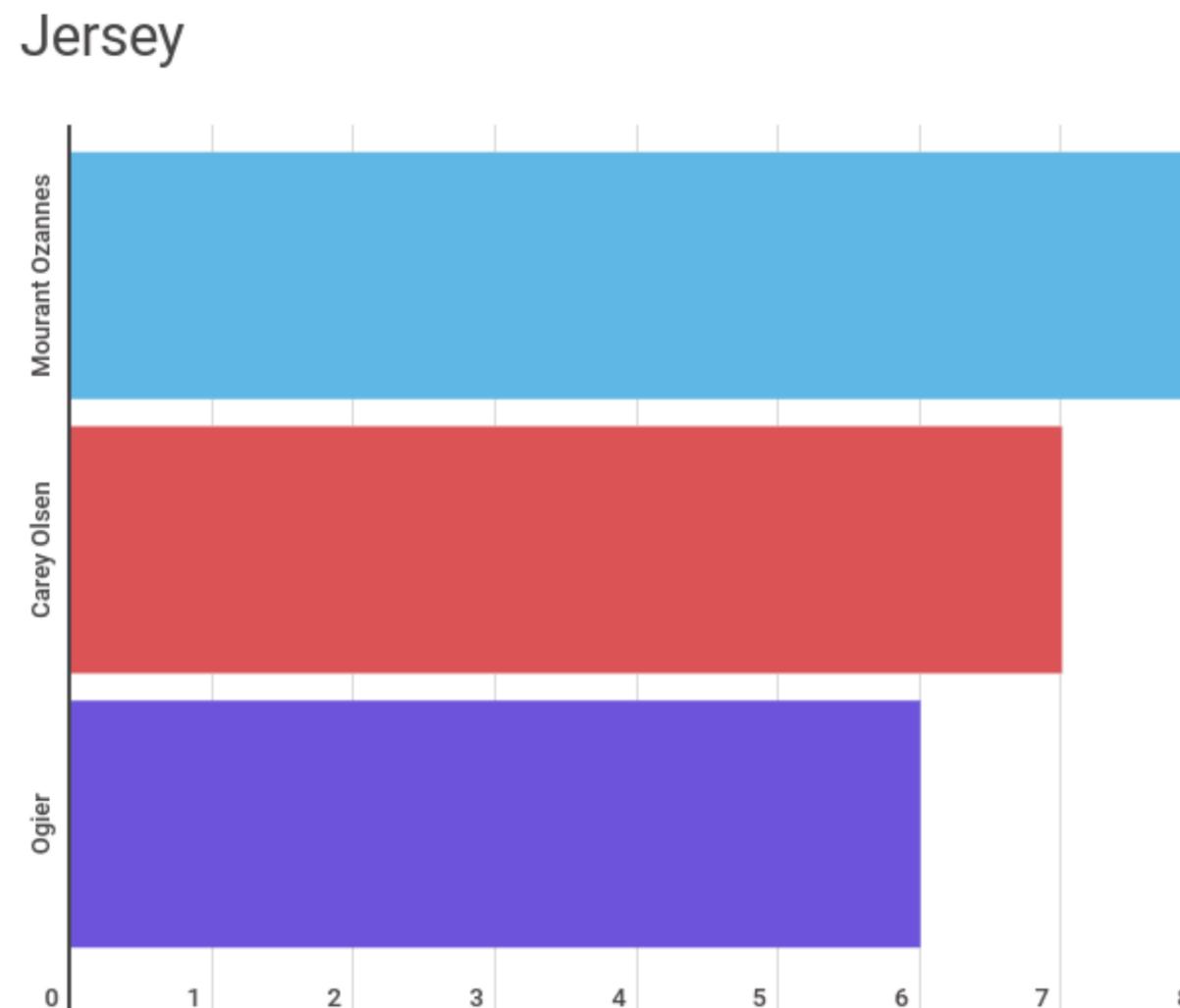
Many familiar names are hybrids of cross-island firms. Carey Olsen, the merger of Carey Langlois from Jersey and Olsens from Guernsey in 2003, fused a pair of firms with several tier one rankings. This created the first real pan-Channel Islands firm. Described in 2009 as having a strategy to ‘dominate the Channel Islands’ legal market, but not to open offices in other offshore centres’, it has now changed tack thanks to offices opened on the other side of the Atlantic, and the fact it is competing with, rather than being in a best friends alliance with, Maples and Calder.

The 2009 guide also saw Mourant du Feu & Jeune from Jersey combine with Ozannes in Guernsey, although Ozannes had a creditable Jersey practice in 2009 prior to the merger. Mourant Ozannes, too, now has a presence in the BVI and Cayman. Ogier, originally a Jersey firm which expanded into Guernsey, also now has offerings in the Caribbean and Luxembourg.

These three firms dominate the market, with eight, seven, and six top-tier rankings in the 2020 guide in Jersey respectively. In Guernsey, Carey Olsen comes out on top with eight top-tier rankings, Mourant Ozannes has five, while Ogier is in tier two across the board, except in dispute resolution which has just one tier of rankings.

The leading lawyer rankings in Jersey, however, is more favourable to Ogier which, with 17 rankings, comes second only to Carey Olsen with 20, and ahead of Mourant which has 13. Ten years ago, Ogier led the way with nine leading individuals to Carey Olsen’s seven; this was prior to *The Legal 500*’s introduction of individual rankings for newer partners and non-partners. Mourant, however, is currently in second place with 18 rankings to Carey Olsen’s 24. Another merger of note created Collas Crill from Collas Day and Crill Canavan (Collas Crill has a Caribbean presence, having merged with CARD in the Cayman Islands in 2015 and Farara Kerins in the BVI in 2017).

Firms by number of top-tier rankings 2020

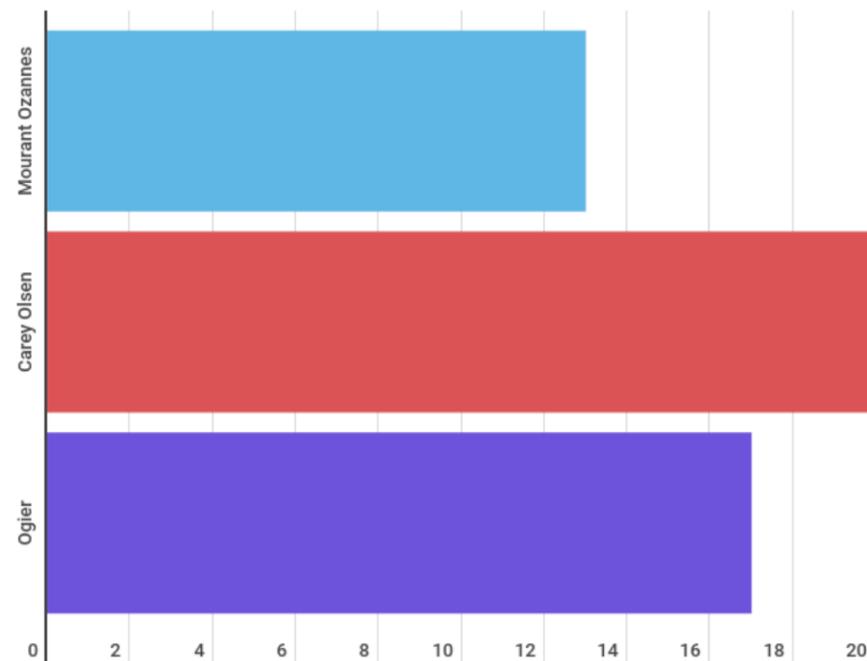


Another example of the reverse of the transatlantic merger phenomenon occurred when Bedell Cristin merged with Cayman firm Solomon Harris over 2018-19. However, Caribbean firms have been coming in the other direction, too, with Walkers – which merged with Crills in 2006 (the same

year as Appleby merged with Bailhache Labesse) – absorbing AO Hall in 2016.

The above paints the picture of a healthy market, with more firms vying for position than in other offshore jurisdictions, such as the Isle of Man or Gibraltar, where the duopoly of Appleby

Leading lawyers in Jersey 2020



and Cains in the former, and Hassans in the latter, are clearly the dominant forces in each market. In Guernsey, Babbé has historically been the island's independent standard-bearer, although, unlike in past years, its only top-tier practice is its dispute resolution.

The big difference between Jersey and Guernsey is what can be found away from the big name offshore firms. Jersey has a much stronger range of independent one-island outfits. Many of these firms could be characterised as specialised boutiques, but many offer a strong service in some or all practice areas and good relations with the smaller cadre of independent Guernsey firms for inter-island work.

Baker & Partners in Jersey is the most prominent of these in *The*

Legal 500 rankings thanks to its position as a top-tier litigation boutique, however, a number of other firms, such as Ward Yates and Dickinson Gleeson, have respectable offerings including dispute resolution and corporate/finance work. Indeed, with the largest population of the Crown Dependencies and British Overseas Territories, this may not be a surprise. Perhaps the only other example of a smaller, independent firm along these lines in Guernsey is Ferbrache & Farrell, formed by mostly ex-Mourant Ozannes lawyers back in 2016.

Suffice to say, whatever your needs, both islands have a wealth of well-connected global offshore and independent firms to choose from. ●

"What sets Ogier apart is its commitment to client service - as well as being technically on the money, its assistance in bringing deals to a conclusion is invaluable."

The Legal 500 UK 2020

[Click here to read more](#)



Top-of-market

Market-leading deals, large and complex acquisitions, sensitive restructurings: Ogier's Banking and Finance team handles some of the largest mandates in the market.



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Family Offices for a New Generation

What used to be a private office set up to deal with a wealthy family's investments is now more complex and exciting than ever before, says Joe Moynihan, Chief Executive Officer, Jersey Finance

Family offices have been through a period of evolution in recent years. What used to simply be a private office set up to deal with a wealthy family's investments, usually fairly safe and traditional in nature and decided by one single family leader, is now more complex and much more exciting than ever before.

Over the last decade, Jersey has seen a significant increase in the number of family offices, not only establishing on-Island, but also migrating to Jersey from other jurisdictions. This is because families are seeing the numerous benefits of having a bespoke, personal and professional service at their beck and call, particularly given the 24/7, on-call and international lifestyles many wealthy individuals now lead.

A New Definition of 'Family'

Jersey Finance's 2018 report 'Flourishing Futures: Making Succession a Success', in partnership with Bedell Cristin (click this paragraph to view) highlighted that around US\$30 trillion of wealth will change hands in the next 30 to 40 years.

The recipients of this wealth transfer are vital in shaping the way family offices operate, due to the considerably different dynamic of families compared to that of the previous generation. Families now are much more tech-savvy and expect to be able to access information whenever they need it, demonstrating a preference for communicating digitally, transacting online, and managing their finances via apps.

Furthermore, new generation families are more international, with members living further apart from each other and they tend to feature more complex relationship arrangements such as same sex marriages, non-marital long-term relationships, pre-nuptial agreements and divorces. Of course, with such a multifaceted dynamic, there is a higher chance of disagreements in where and how the family's wealth should be invested and for what purpose. This is pertinent, given that the last year saw a continuation of family offices' drive towards higher risk, more illiquid investments in their pursuit of yield, according to the *Global Family Office Report 2018* ([click here to view](#)). As part of this, nearly half (46 percent) of the average family office portfolio is now allocated to alternative investments.

This is where the new, innovative family office comes into play; with professionals on hand to advise on a wealth management plan best suited

to the whole family, with the future firmly in mind.

A Jurisdiction of Substance

High-net worth families understandably place a huge amount of importance on their jurisdiction of choice, with regulatory substance and cutting-edge professionalism coming top of their must-haves list.

In Jersey Finance's *'Jersey: A Clear Choice for Family Offices'* (2019) ([click here to view](#)), it is noted that there are four key aspects to a modern family office, based on demand and trends: wealth preservation, asset protection, philanthropy and privacy. Within these, technology and infrastructure, regulation and legal certainty play a vital supporting role in a successful family office arrangement.

Jersey offers a modern and sophisticated legal framework and a world-class offering of private wealth solutions, designed to suit the increasingly varied situations which families now face. These range from simple trusts and underlying company structures for UK families, through to high value and complex structures working with trusts, companies, limited partnerships and foundations for international families. In addition, the establishment of 'virtual' offices for ultra-high net worth families are also available, as are structures for corporates looking to support and reward staff.

“Jersey feels like an extension of London – I can leave Jersey and fly to London and be at the London family office within 2 ½ hours. The family members also visit often and can fly commercially or fly over in their private plane”

Jersey has £400 billion in trusts which have been established by private individuals (Capital Economics, 2016), and an ever-increasing uptake of the Jersey Foundation. The Jersey Foundation has become a popular choice, created for charitable or non-charitable purposes, or a mixture of both. A foundation has a number of benefits. It is flexible and infinite in duration, if necessary. Foundations are clearly and unambiguously registered with the Jersey Financial Services Commission. Their council of members structures are flexible in terms of composition, and Foundations provide a 'guardian' safeguard, making certain that the council of members maintain a clear charitable focus. Since their launch in 2009, 384 Jersey Foundations have been formed (as at August 2019) and it is expected that with the upward popularity of philanthropy these will see further interest.

Jersey's trust and private wealth offering is incredibly substantial, with the jurisdiction's business community holding 1,282 members of the worldwide membership for The Society of Trust and Estate Practitioners (STEP) – one of the

largest branches globally – and is gradually becoming one of the most popular destinations for seeking private wealth expertise, from across the globe.

Supporting the finance and legal sector as a whole is Jersey's robust regulatory framework and flexible yet solid legal system, which many clients find reassuring when deciding where to manage their wealth. As one of the best regulated international finance centres (IFCs), Jersey has been acknowledged by independent assessments from some of the world's leading bodies, including the World Bank and IMF, as well as scoring top marks from the OECD on tax transparency. The jurisdiction was also subject to a Mutual Evaluation by MONEYVAL in 2016 and found to be 'compliant' or 'largely compliant', with 48 out of 49 of the FATF recommendations, the highest score amongst all states assessed.

No Longer One-Size-Fits All

Family offices come in all shapes and sizes, with varying designs and intentions, which is what has brought them back into popularity for high-net worth individuals.

“We did not choose Jersey as a jurisdiction for tax reasons. Instead, we wanted reassurance that we would be able to preserve the foundation’s wealth and make sure the assets are protected”

Jersey Finance’s publication ‘*The Clear Choice for Family Offices*’ ([click here to view](#)) highlights both the diversity of family offices currently present on the Island, as well as the compelling reasons why they have chosen to base their offices in Jersey. For instance, when discussing the legal certainty of basing a family office in Jersey, one Principal said:

“We did not choose Jersey as a jurisdiction for tax reasons. Instead, we wanted reassurance that we would be able to preserve the foundation’s wealth and make sure the assets are protected.”

Another noted that the IFCs strong connectivity credentials helped them decide Jersey was the right jurisdiction for them:

“Jersey feels like an extension of London – I can leave Jersey and fly to London and be at the London family office within 2 ½ hours. The family members also visit often and can fly commercially or fly over in their private plane.”

Family offices, though differing in nature, all tend to have one or two things in common. One is that,

while they may have several family offices in multiple jurisdictions, they see Jersey as the main hub for their family’s wealth as well as the additional concierge services which manage travel, schooling and other family-based administration. Another common thread is that of philanthropic investment, which is often a key consideration for modern ultra-high net worth families. This is usually included in the overall work of a family office based in Jersey, and some family offices specifically choose to base their philanthropic arm in the jurisdiction due to its clear expertise and investment in this area.

According to the Global Family Office Report 2018, nearly two-thirds of next generation heirs are expected to take over within the next 10 to 15 years, and the future of how wealth is managed is becoming increasingly intertwined with purpose. The report found that more than 1/3 of family offices already invest in impact investing, and 39% expect that the next generation will increase their allocations to socially responsible or environmental, social and governance (ESG) investing in future.

With such trust in Jersey’s talent pool and professionalism as an IFC, wealthy families frequently find themselves coming to see Jersey as a safe, secure and private jurisdiction to set up a home in too. One example, the patriarch of a first generation ultra-high net worth family, moved to Jersey with his family over 10 years ago. They chose Jersey due to lifestyle, the high-quality education options available and the ease of travelling to and from the UK, and then set up a private company in Jersey, which subsequently became regulated.

It seems that with many of the next generation of investors gradually taking up management or executive roles within the family office structure, the new trends for philanthropic and alternative investments must be considered key priorities within the private wealth community. Legal professionals, in particular, need to ensure they are ahead of the rapidly developing impact investment space as well as being aware of the complex dynamic which wealthy families now present.

It may be evolving faster than ever before, but family offices are probably going through their most challenging and exciting time yet and jurisdictions like Jersey are ready and armed with specialist knowledge to help families look to the future with confidence. ●



With a career in financial services spanning four decades, Joe has a strong commitment to the future success of the industry in Jersey.

Joe commenced his professional life in the banking sector, rising to the position of CEO of Jersey and the Isle of Man for a major bank, which included responsibilities for trusts and investments. In recent years, he expanded his focus as Director of Financial Services within the Government of Jersey, where he worked closely with industry and regulator to ensure the Island’s position as a leading international finance centre (IFC). Before joining Jersey Finance in February 2019, Joe was working to establish high-reputation regulatory frameworks and business models for IFCs in the Middle East and Africa.

Read more





Jersey: Downstream structuring for top sponsors

Leading private equity sponsors investing in larger scale primary deals increasingly require innovative structuring solutions to access transactions that are not available via a conventional M&A process. Jersey investment holding vehicles provide an adaptable platform for delivering these solutions as well as for conventional buyouts.

This article from Maples and Calder (Jersey) LLP, the Maples Group's law firm in Jersey focuses on the features of Jersey holding companies that are attractive from a global Private Equity (PE) acquisition/structuring point of view and other uses of Jersey as part of the downstream investment process



One of the main attractions for top sponsors looking to maintain a stable of coveted assets is the 'best in class' investor return prospects which those assets have the potential to achieve.

It has been suggested that the mid-market deal space (and within that the secondary and tertiary landscape) has been the most competitive and possibly overcrowded segment of the global PE market in recent years. The considerable pressure on increasing investor returns continues unabated. Among mid-market dealmakers the constant pace and number of participants involved in preemptive bid and conventional auction processes persists.

Strong top sponsor appetite continues to exist for investment opportunities that attract greater potential for value creation over the lifetime of an asset, even where such transactions may involve more upfront cost and complexity. Another trend developing among top sponsors and larger asset managers involves the acquisition by them of minority stakes in smaller rival PE operations. Drivers behind these types of investments include increasing management and performance fees across the sector, a need for permanent capital by mid-

market buyout groups and a different and more creative way of deploying uncommitted equity.

The most commonly commented upon challenge for sponsors of all sizes remains (and is not going anywhere), that the level of undeployed capital, or 'dry powder', available in the market is so steep that you could ski off it. How PE houses continue to put investor capital to hard work requires innovative and creative investment strategies supported by the use of investment holding vehicles with sufficient flexibility to implement such strategies.

Jersey holding companies: structural neutrality

Rather than using vehicles from the 'home' jurisdiction of a sponsor or the jurisdiction(s) where a target business is located, structuring via a neutral venue that provides a level playing field for investors is generally preferred.

A primary motivator for selecting an international finance centre like Jersey for a tiered investment/acquisition holding structure is being able to take advantage of fiscal regimes that do not result in corporate, capital gains, and other tax leakage on the profits of the investment-holding vehicle itself. Often, onshore tax is incurred at

“The most commonly commented upon challenge for sponsors of all sizes remains (and is not going anywhere), that the level of undeployed capital, or 'dry powder', available in the market is so steep that you could ski off it”

the asset or portfolio company level or on income or gains accruing to ultimate investors.

Examples of Jersey featuring in some of the most significant top sponsor PE investments in 2019 include:

- (a) A joint venture between two of the largest North American global investment management firms in Abu Dhabi oil pipeline. The first western investment of this nature in Abu Dhabi infrastructure (\$4bn).
- (b) The multibillion-dollar acquisition of a market data platform from a top sponsor syndicate by an international global financial markets business.

- (c) A permanent capital investment by North American asset manager in an established private equity platform.

Jersey investment vehicle benefits
The main commercial and structural benefits to using a Jersey investment holding company for downstream investment structuring include:

- (a) Jersey company law being based on English company law but with greater flexibility (for example, see below in relation to capital extraction);
- (b) An extremely favourable corporate tax regime;
- (c) No stamp duty on the transfer of shares and so should not be subject to

tax/stamp duty on future disposal;

- (d) Jersey's close proximity to London and same time zone makes closing transactions simpler;
- (e) Can achieve structural subordination of intra-group / acquisition financing;
- (f) Target group management / MEP friendly, i.e. facilitates the alignment of target management objectives with those of the PE investor; and
- (g) Allows for simplified dividend flows to PE investment vehicles and therefore ultimate PE investors.

in relation to returns to investors – whether by means of dividend, redemption or buy-back of shares or capital reduction. In particular, monies payable on the redemption or buy-back of shares may be funded from any source, including certain capital accounts.

A Jersey company may also make a distribution from a wide range of sources, not merely from distributable profits/reserves.

Tax regime

A zero rate of income tax applies to virtually all Jersey investment holding companies. However, if required, it is possible to ensure that a Jersey company is tax resident in another jurisdiction provided that:

- (a) It is centrally managed and controlled in another place outside of Jersey;
- (b) It is resident for tax purposes in the other place; and
- (c) The rate of corporate tax to which the company will be chargeable in that other place is 10% or more.

Evolution and structuring utility

As Jersey has kept pace with the changing nature of both mid-market and top sponsor buyout transactions as well as

The growing emphasis on investment vehicles maintaining substance in well-regulated international finance centres mean the air links to and from Jersey and its domestic infrastructure put it in an excellent position.

As an alternative form of exit, Jersey companies are also suitable vehicles for IPO and have been listed on all the world's major exchanges.
 Corporate flexibility: investor return
 One of the key advantages of using a Jersey investment company is the flexibility of Jersey company law

Each of the authors and Maples and Calder (Jersey) LLP, the Maples Group's law firm in Jersey, represent a number of top sponsor and mid-market PE houses. If you would like further information please liaise with your usual Maples Group contact or:



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alternative investment strategies, it has played a useful role in connection with structuring for senior management / executive incentivisation arrangements and also intra-group debt financing.

Management incentivisation: MEPs/EBTs

Rewarding, motivating and retaining senior employees and attracting new high profile executives to portfolio companies requires a well-structured, tax efficient and effectively administered equity incentive plan.

“The International Stock Exchange (TISE) in the Channel Islands has seen a dramatic increase in the listing of quoted Eurobonds used to finance downstream PE investment”

As part of the conventional buyout process, it is usual for share based incentive plans to be designed to align the activities of executives and senior employees with the requirements of the PE group investor. Typically, share plans operate in conjunction with either a management equity plan (MEP) framing how and when equity interests are issued to executives and senior management by the top acquisition holding company or an employee benefit trust (EBT). An EBT is generally an offshore trust where the trustee's duty is to act in the interests of the employees (and certain qualifying former employees) who are beneficiaries under the EBT.

MEPs attaching to Jersey holding companies and Jersey EBTs that form part of downstream PE investment models fulfil a number of functions depending on the plan structure, the stage in its life-cycle and the target company structure.

It is common for EBTs to allow for multiple share plans to be managed through a single trust arrangement for larger groups of companies.

Incentive plans for the PE management team are often more creative and can be tax efficient depending on the individual manager/executive's country of residence and domicile. Plans include structuring of carried interest, share incentives, bonus deferral and partnership interest management.

Debt listing

The International Stock Exchange (TISE) in the Channel Islands has seen a dramatic increase in the listing of quoted Eurobonds used to finance downstream PE investment. This has been in line with the significant volume of secondary and tertiary auction processes conducted in the past seven to eight years.

Designation as a recognised stock exchange by HMRC has enabled TISE to facilitate the tax efficient listing of debt securities issued as part of a large number of mid-market buyout transactions. The HMRC designation is important because qualifying debt securities listed on TISE are eligible for the quoted Eurobond exemption. That exemption allows an issuer within the UK tax net to make interest payments on listed securities gross, i.e. without deduction of withholding tax at a rate of up to 20%. Similar exemptive regimes apply in Ireland and elsewhere.

There are a number of other key advantages of listing intra-group PE debt on TISE including:

- (a) Unlike other European stock exchanges, TISE is not bound by any EU directives, including Market Abuse Regulation, and is able to be considerably more flexible in its approach;

- (b) TISE does not require an issuer to appoint a local paying agent in the Channel Islands or for the notes to be issued in a clearing system;
- (c) TISE is aware of transaction time constraints which affect issuers and will commit to meeting an agreed transaction timetable; and
- (d) Listing fees levied are competitive with other Eurobond exchanges. ●

This update is intended to provide only general information for the clients and professional contacts of the Maples Group. It does not purport to be comprehensive or to render legal advice.



Private capital and private equity come together

Dominic Wheatley, chief executive of Guernsey Finance, highlights new research on a specialist development for Guernsey

Guernsey's funds sector is not alone in clearly seeing the merging of the private equity and private capital space. Private capital has become a normalised source of financing, while the investment management sector is seen increasingly as a gateway to a direct investment opportunity.

“Guernsey is well placed to service the growing trend for attracting and securing private capital investment”

A survey carried out by Guernsey Finance earlier this year at the SuperReturn conference in Berlin showed that jurisdictional choice would be increasingly dominated by specialists whose substance can support this convergence, the rise of private capital and the desire for bespoke structuring.

Guernsey is well placed to service the growing trend for attracting and securing private capital investment, whether that money is drawn from family offices, high-net-worth individuals (HNWIs), private client customers of banks, and other non-institutional money. Private wealth is estimated to exceed \$170tn worldwide in the next 18 months, against total institutional assets under management of \$100tn. That growth has driven more investment into alternatives.

In the past decade, since the global financial crisis, returns to private capital investors just have not been there. Liquidity has been generated by central bank policies and high-net-worth individuals have been

the beneficiaries of that. However, liquidity is an obvious challenge for private capital looking at private equity or infrastructure long-life funds, and so there is a growing focus in the market on building structures to offer a degree of liquidity.

Private wealth is a very different market to dealing with institutional money. New structures and different distribution methods are coming into play as institutional clients are interested in democratising traditional institutional private fund illiquid products to secure greater access to the private capital community.

With the increasingly sophisticated demands of clients, the Guernsey funds industry has developed, with its renowned flexibility able to provide different solutions for different people in different circumstances.

It is yet another stage of Guernsey’s 50-year funds journey, from primarily a retail fund domicile to an alternative assets specialist, using

our key attributes of being agile and responsive to the market. Guernsey certainly retains the flexibility to satisfy the requirements of sophisticated investors.

The introduction of the Guernsey Private Investment Fund, which has proved popular both for new managers looking to launch a first fund, and existing promoters wanting to offer a simple product to investors quickly. A PIF can be open- or closed-ended, is flexible in its formation, and is restricted to a maximum of 50 investors. Our SuperReturn survey also showed that private capital and family offices are looking for bespoke structures to address specific commercial, legal, regulatory, taxation or operational concerns over their investment. The PIF is an ideal vehicle for private capital to invest in private equity.

At the Guernsey Funds Forum in London earlier this year – an event which attracted more than 500 delegates – David Williams, partner at Simmons & Simmons in London, described the Guernsey funds suite

and environment as ‘coherent, stable, well-regulated, neatly defined, flexible and responsive’.

Guernsey certainly offers distinctive solutions in the funds world – private capital, green funds, and bespoke, tailored product, in a world-leading business environment, for those looking for a more sophisticated approach to private equity. ●



Dominic Wheatley is chief executive of Guernsey Finance, where his role includes business development and the promotion of Guernsey’s finance industry in its target markets, including Europe, the US, and emerging markets. He moved to the island nearly 25 years ago as an insurance underwriter.

Read more on
Guernsey funds





Climate finance – can demand come quickly enough?

Dr Andy Sloan, Chair of Guernsey Green Finance, outlines Guernsey's role in tackling climate change through the breadth of financial services

It is difficult to ignore the issue of climate change today. Climate finance – the issue of how the global population will make the changes required to limit global warming and give the planet a sustainable future – tends to be a step away from the Extinction Rebellion protests taking place in London. However, climate finance is a significant issue for Guernsey.

While it was some time ago that Guernsey made a strategic commitment to climate finance, it is only in recent years we have seen that lead to the development of bespoke green financial products. Last year we developed the Guernsey Green Fund regime – a world first regulatory regime for green investment funds.

Guernsey is playing a full part in the drive to deliver a more sustainable future, at the forefront of the global finance movement on climate change.

Guernsey Green Finance is a member of the United Nations' Financial Centres for Sustainability, part of the UN Environment Programme, a network of more than 30 global financial centres, including Paris, London, Tokyo, and Beijing, which is working to meet the investment goal of nearly \$90tn globally for green



“Conventional wisdom is that green and sustainable investing is becoming increasingly more important for private capital, particularly where family wealth is being restructured for inter-generational wealth transfer”

and sustainable infrastructure by 2030 and Guernsey, through its regulator the Guernsey Financial Services Commission, is also a member of the Network for Greening the Financial System.

Guernsey rates well against the UN EP framework, making good progress on delivering its own plan as part of the global network, but frankly much more needs to be done to start to make significant progress to deliver against the UN IPCC targets.

Our flagship at present is the Guernsey Green Fund, available to any Guernsey-domiciled fund structure which has the objective of a net positive environmental outcome, with at least 75% of investments falling within the development banks’ list. For non-Guernsey funds and other instruments, TISE GREEN is a dedicated segment of the Guernsey’s international securities exchange.

It has been designed to provide certainty and clarity regarding investment parameters, and could allow for accurate benchmarking in the sector once take up reaches a tipping point.

As a leading funds domicile, with particular expertise in private equity investments, Guernsey has been administering clean technology and ESG funds for quite a few years. The Green Fund is building on our expertise and should help to attract further investment.

The London Green Finance Initiative, which Guernsey has an agreement to work with, has highlighted the need to untangle the value chain to unlock the private capital required to make green finance much more widely available through society.

The argument goes – where there is capital from issuers, there will be opportunity for investors.

But our own recently published research has found that investment from the family office and private wealth sector into the green and sustainable market has been restrained, and slower than expected.

Conventional wisdom is that green and sustainable investing is becoming increasingly more important for private capital, particularly where family wealth is being restructured for inter-generational wealth transfer.

But it appears that there may be a delay in significant investment coming into the green space until we see that inter-generational transfer of wealth. If that is true, can that transfer come quickly enough to make a difference?

Or is it the prospect of improved returns which would encourage green investing? It appears that despite the populist rhetoric – be it saving the planet, the ice caps, or the polar bear – our research indicates that when it comes to investments, the number one concern for the owners of private wealth and their advisers, is preservation and growth of capital.

Sir Roger Gifford, former Lord Mayor of London and chair of the London Green Finance Initiative, was the keynote speaker at our flagship London funds event in May this year. He said that there is the potential for market transformation, with different types of purpose-led finance, driven by global coordination between different sectors.

‘This isn’t really a competition between London, Guernsey, and Paris, this is a global problem that we have around climate change, and we have to solve it through discussions and sharing best practice,’ he said. ‘Finance has a unique ability to play a transformative role in driving this and offering practical ideas, and we need the right governance, the right risk management, willing investors, and enabling finance centres.’

Guernsey is a centre of expertise for green finance, and has been involved in investment funds and family office

services for more than half a century. Guernsey trustees, corporate structures, banks, and investment and fund managers are frequently used for family offices established in London, Geneva, and elsewhere, and also based in Guernsey.

They like Guernsey’s specialisms and the pool of talent in these sectors, as well as Guernsey’s traditional attributes of political security, low crime, tax transparency, and the economic substance provisions confirmed by the European Union and OECD earlier this year. ●



Dr Andy Sloan, Chair of Guernsey Green Finance and Deputy Chief Executive, Strategy, at Guernsey Finance, is responsible for the development of jurisdiction-wide financial services strategy. He joined Guernsey Finance permanently in August 2018, following a six-month part-time secondment from the Guernsey Financial Services Commission, where he was Director of Financial Stability and International Policy Advisor. He is a member of States of Guernsey advisory groups on international tax policy, and Brexit, and is a member of TheCityUK’s ISRG regulatory coherence working group and the BVCA’s Channel Islands Policy Group.

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Isle of Man picks up speed

Will Tolcher looks at a decade of *The Legal 500's* rankings to reveal key trends in the Manx market and which offshore law firms are moving up the grid

A crown dependency, the Isle of Man has two unique calling cards other than its finance industry. The first is its world-famous TT motorcycle races. Running since 1907, competitors now whizz around closed public roads at speeds of up to 320 km/h. The other, perhaps secondary, clichéd image of Manx is the significantly more sedate horse trams which for decades have ferried tourists up and down the Douglas seafront. But which of these modes of transport most closely resemble the island's legal market? Looking at ten years of historical data from *The Legal 500's* Isle of Man rankings gives us a sense of the pace of the island, but first, a closer look at the jurisdiction itself.

“Considering the stability of the market it would be easy to conclude that the practice of law on the Isle of Man is more of a sedate tram journey rather than a white knuckle thrill ride”

Trusts and corporate matters are key areas of work in many traditional offshore jurisdictions, but these are not the key drivers of the Manx economy. Instead, government figures place gambling and insurance as its two core economic sectors, each contributing 17% of the island's gross national income. Gambling returns to *The Legal 500's* UK 2020 guide after being covered in the 2014 and 2015 guides as e-gaming. This area is key to the Manx economy as it permeates across many practice areas, especially considering how much regulatory work is done by in-house counsel.

When it comes to insurance work, life insurance crosses over with a niche area of international pensions, with Manx schemes (recognised as Qualifying Recognised Overseas Pension Schemes) being popular for internationalised workforces and expatriates. These are combined in *The Legal 500's* Insurance and pensions coverage. Notably, one area where the Isle of Man is distinct from the Channel Islands is that it does not set out its stall in the investment funds arena – the investment funds and capital markets practice areas

have its constituent parts folded into their the Corporate and Banking sections respectively within our 2020 guide.

But what of the market? Ten years ago, Dickinson Cruickshank merged with global firm Appleby. Unlike the Channel Islands, Appleby is the only global name in offshore law present in the Manx market. Instead, its key competition is local independent firm Cains, now based in Fort Anne overlooking the island's ferry port. Both firms have dominated the top tier rankings in the Corporate and Banking and finance rankings over the past decade.

Away from corporate and finance work, several other practice areas have had equally consistent top-tier firms. Formed in 1949, Simcocks celebrated its 70th anniversary in 2019 and is the only firm ranked in the top tier for private client work, with Phil Games regarded as the doyen of this area on the island.

DQ Advocates is another consistent performer, slotting in to the second

tier just behind the others in many areas, and Annemarie Hughes a key name in the pensions arena.

In disputes, Cains and Appleby share the top tier with Gough Law, with name partner Alan Gough widely recognised as a leading lawyer in the field. An archetypal litigation boutique which is not ensnared into conflicts by panels and other historical relationships with major financial institutions, Gough Law is scheduled to close its doors at the end of 2019 when Gough himself retires.

Looking at the individual lawyer rankings, 11 of the 19 leading individuals ranked in 2009 maintained that standing over the last decade. Indeed, as far as firm longevity is concerned, all firms ranked for corporate and commercial work in 2009, albeit with some name changes, are again ranked in at least one section this year.

Considering the stability of the market it would be easy to conclude that the practice of law on the Isle

of Man is more of a sedate tram journey rather than a white knuckle thrill ride. However, one law firm has not long emerged to challenge to the status quo on the island: Keystone Law.

Although the platform law firm with partner-level consultants has its centre of gravity in England and Wales, it nonetheless made a splash when it entered the Manx market in 2017. That year the firm took four tier two rankings and gained a fifth the year after. With two leading individuals in the Corporate rankings, Geoff Kermeen and Stephen Rodd, and Ben Hughes ranked for Insurance and Pensions, the firm already has a critical mass. Needless to say, Keystone is breathing down the necks of more established firms after just two years in the market. If it continues its rate of growth the firm genuinely has a chance of breaking the Manx duopoly of Appleby and Cains.

Coupled with Gough Law's imminent closure, perhaps the throttle on the Manx market is starting to twist. ●


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Regulatory Pressures Afoot

There must be mutual confidence and respect between industry and the regulator to achieve good compliance across the board, says Vicki Unsworth, head of the commercial and regulatory litigation team at Advocates Smith Taubitz Unsworth Ltd

The Isle of Man is widely considered to be a well-regulated jurisdiction with a robust regulatory framework overseen by the Financial Services Authority (FSA). Businesses across a variety of fields are licensed, regulated, and overseen to undertake business by the FSA or alternatively are, since the introduction and implementation of the Designated Businesses (Registration and Oversight) Act 2015, regulated by the FSA in relation to compliance with the Island's anti-money laundering (AML) and countering the financing of terrorism (CFT) legislation.

Businesses caught by the expanded level of regulation are not just financial businesses but a whole array of non-financial businesses and professions, such as lawyers and accountants as well as estate agents and tax advisors, to name just a few.

“It is not only companies and businesses that are at risk, directors and officers can be held personally liable for breaches in addition to the company or other legal structure”

With tighter regulation there are, however, more chances of breaches occurring within businesses. There also appears to be an ever-increasing number of regulatory offences hitting the statute books, many of which remain within the criminal courts and have custodial penalties. It is not only companies and businesses, however, that are at risk, directors and officers can be held personally liable for breaches in addition to the company or other legal structure.

The FSA message is that it is not sitting waiting to catch businesses out and its overall intention is to achieve compliance and foster good working relationships. However, if a breach occurs within your business you need to act in a careful and considered manner.

The FSA has publicly committed to working alongside regulated entities to ensure compliance and, where regulated entities are open and transparent with the regulator, they will not necessarily use the heavy powers of enforcement available to them. But, with international pressures from the Financial Action Task Force (‘FATF’) and MONEYVAL and the UK and Europe more generally, with regard to tighter regulation, will Isle of Man regulators really put their money where their mouths are?

In January 2017, MONEYVAL published its initial mutual evaluation report on the Isle of Man which commented on the effectiveness of island-wide AML and CFT measures as well as the Isle of Man’s compliance with the recommendations by FATF. While the island was found to have robust legislation in place, there was some criticism made with regard to the enforcement of the same. Therefore, across industry, there was a concern the FSA may seek to take more regulatory action, simply to increase the enforcement numbers to satisfy international pressures. A number of amendments to the regulatory framework have also been implemented over the course of the last two years, to address other concerns and criticisms from MONEYVAL.

As anticipated, since the 2017 MONEYVAL report, there has been an increase in regulatory prosecutions coming before the court. Thus far, however, the success rate has been poor and the FSA was heavily criticised in its approach in the recent case of *HMAG v MBC Limited and others*. The prosecution withdrew the case against the four defendants in that case, following an application for a stay on the grounds of an abuse of process, arising from the unfairness of the FSA’s investigation into the company’s alleged breaches of the

AML and CFT Code. The court similarly criticised the manner in which the FSA conducted itself in its investigation which was, it was said by the Deemster (Judge), to be wholly prejudicial to the company. Prior to any judgment being issued, the prosecutor applied to withdraw the case, although a significant costs application was made by the defendants.

More recently, the FSA initiated a prosecution against a company director for failure to report suspicions under the *Proceeds of Crime Act 2008* – *HMAG v Monk*. The Deputy High Bailiff (Summary Court Judge) dismissed the case at the committal stage, on the basis of there being insufficient evidence to support a case. The prosecution was heavily criticised for the lack of evidence of money laundering, or any criminal offence, in fact, having been committed. The dismissal has recently been upheld on appeal.

Therefore, if there was any indication of a run on prosecutions to satisfy international bodies, the lack of success and public criticism that has followed, may well have poured cold water on the same and the FSA appears to have reverted to its cooperative compliance approach.

That said, there has been an increase in the number of restraint orders being sought under the *Proceeds of Crime Act 2008*, many of which are on an international cooperation basis. The process for obtaining such orders is carried out through the criminal courts and the Attorney General’s Chambers has now set up a separate arm of its prosecutions department to focus on international cooperation and mutual legal assistance requests and recover assets. There is no requirement for there to be a predicate criminal offence in the Isle of Man in order to obtain such an order. However, once again the court has heavily criticised the approach taken in these applications and in particular the lack of disclosure and transparency from the prosecutions department to the respondent. One big problem in the Isle of Man is the lack of legal funding available to challenge proceedings brought under the *Proceeds of Crime Act 2008*. The court, pursuant to the legislation, has a significant restriction on its powers to allow the restrained assets to be used to fund legal advice and representation in relation to the restraint order proceedings. Unlike in England and Wales, legal aid funding is not available for such proceedings in the Isle of Man, and this begs the question as to whether the Isle of Man is compliant with its



Left to right: Vicki Unsworth, Darren Taubitz, Hazel Smith



The team at Advocates Smith Taubitz Unsworth Limited are well versed in advising in these areas, from small businesses all the way to international corporations as well as directors and officers. Our team, led by Darren Taubitz and Vicki Unsworth have excellent working relationships with the various regulators, and have appeared in all manner of regulatory cases in the Island, including AML breaches, data protection prosecutions, and director disqualifications.

We will always provide business-centred advice with a view to avoiding court action, if possible. Darren and Vicki are qualified Data Protection Practitioners and Vicki has passed the Institute of Directors Diploma with distinction. These additional qualifications ensure the advice provided is holistic and rounded and not simply from a lawyer's

view. Every member of our team is experienced in appearing in court and therefore can assist if matters proceed that far, ensuring a high level of advocacy and representation is provided.

If you need advice or assistance in relation to regulatory compliance or data protection contact Advocates Smith Taubitz Unsworth Limited.

Contact Advocates Smith Taubitz Unsworth Limited 

“There have been no known deferred prosecution agreements entered into in the Isle of Man as yet, but this step appears to be a move forward in relation to such approach”

international and local human rights obligations.

In September 2019, the FSA issued its new Enforcement Decision-Making Process and Settlement Procedure.

This, for the first time, documents the FSA's approach to enforcement and how regulated entities are expected to work alongside the FSA in cases of breach. It is positive to note that this procedure continues to follow the same theme of cooperation and working alongside regulated businesses to achieve compliance. The key message from the FSA is that it is committed to further develop its culture of constructive, open, and transparent engagement with industry and other key stakeholders. There have been no known deferred prosecution agreements entered into in the Isle of Man as yet, but this step appears to be a move forward in relation to such approach, where of course the same would be appropriate.

Additionally, legislation was introduced this year in order to introduce civil penalties to the enforcement powers of the FSA and there is further legislative change in progress to further widen the FSA's enforcement powers.

Therefore, while regulation is being tightened and there appears to have been an initial flurry of activity, perhaps to satisfy external international bodies, the waters now appear to be calming and moving back toward mutual cooperation and assistance between regulated entities and the FSA, which can only be described as a positive move. There must be mutual confidence and respect between industry and the regulator to achieve good compliance across the board. Industry must have the ability to approach the regulator for assistance and report breaches, without fear of an iron fist. The recent steps taken by the FSA, if followed through in practice, should assist in such approach. ●