

Voisin & Co is one of Jersey's oldest established and best known legal practices which can trace its history over more than 125 years. The firm has a strong reputation for its expertise in commercial law and litigation.

Volaw Trust Company was incorporated in 1982 and is one of Jersey's leading independent trust companies. Volaw excels in the formation and management of trusts, companies, collective investment schemes and other specialist structures.

Both law firm and trust company strive to achieve the highest standards of service and this newsletter is intended to promote greater awareness of the business we can and do undertake.

We publish a considerable amount of literature on a variety of legal matters; please ask your contact within the firm to provide you with a full list of our publications.

Alternatively you can visit our Internet home page at [www.volaw.com](http://www.volaw.com)

## THE CHANNEL ISLANDS AND THE EUROPEAN UNION

Jersey's relationship with the European Union has been continuously under the spotlight of late as politicians both within and without the island have suggested that some of Jersey's activities may be under threat from the EU.

So, it is worth remembering that Jersey is not actually a member of the EU.

Article 227(4) of the Treaty of Rome provides that the provisions of the Treaty 'shall apply to the European territories for whose external relations a Member State is responsible'. Jersey is a European territory for whose external relations the United Kingdom is responsible, but special terms were negotiated for the island at the request of the insular authorities at the time of the accession of the United Kingdom to the European Economic Community.

Article 26(3) of the Act of Accession of the United Kingdom to the European Communities 1972 provided that the following paragraph (5)(c) should be added to Article 227 of the EC Treaty:-

"This Treaty shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community signed on 22nd January 1972."

Jersey is not a separate Member State, nor is it an Associate Member of the European Communities. The arrangements to which Article 227(5)(c) refers are set out in Protocol No 3 attached to the Act of Accession. Community law is inapplicable to Jersey save to the extent

necessary to ensure the implementation of that Protocol.

It was important for Jersey's agricultural industry to protect its free trade with the United Kingdom and thus it was necessary for the Island to be inside the tariff and levy wall erected around the common customs area. In this way, the historic customs union between Jersey and the United Kingdom could be extended to the EC as a whole.

The Protocol provides that the EC Treaty applies to Jersey only in relation to arrangements for the free movement of manufactured and agricultural goods. This requires Jersey to apply the common external tariff, the agricultural levies on imports from third countries and certain provisions of the European Common Agricultural Policy.

Regulation 706/73 states that so far as the provisions of the EC Treaty relating to free movement of agricultural products are concerned, the United Kingdom, the Channel Islands and the Isle of Man are treated as a single Member State.

The EC's Common Agricultural Policy applies to the island only to the extent required to maintain free trade between Jersey and the Member States. Agricultural producers in the Island do not,



Brief Jersey

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➤ therefore, benefit from any financial support from EC funds. To the extent that the island imports goods direct from non-EC sources, the proceeds from the imposition of the EC's tariffs and levies are added to the island's revenues and not those of Brussels.

Other provisions of the EC Treaty, for example those relating to the free movement in the EC of persons, services and capital and the harmonisation of fiscal and social policies, are not covered by the Protocol and do not, therefore, apply to Jersey which is treated as a third country in respect of such provisions.

Jersey is, therefore, able to continue to exercise immigration control, subject to the separate obligation contained in Article 4 of the Protocol that the authorities in Jersey are obliged to apply the same treatment to all natural and legal persons of the Community.

The Protocol protects the traditional rights of movement enjoyed by

Channel Islanders in the United Kingdom but such persons may not benefit from Community provisions relating to the free movement of persons and services in other Member States. Channel Islanders are defined

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## Traditional rights of movement are protected

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as people who hold British citizenship by virtue of the fact that they, a parent or a grandparent were born, adopted, naturalised or registered in Jersey but not if they, a parent or grandparent were born, adopted, naturalised or registered in the United Kingdom or if they have at any time been ordinarily resident in the United Kingdom for five years.

The Protocol provides that, if

difficulties appear in relations between the Community and Jersey during the application of the arrangements, the Commission shall propose safeguard measures. However, it was made clear by the United Kingdom Government in 1971 that this is not a clause 'which could be operated in some way to undermine the arrangement that we have that the Treaty really does not apply to the island except in relation to the limited provisions of the trade regime'.

Any change to the Protocol would require an amendment to the Act of Accession of the United Kingdom and in turn an amendment to the Treaty of Rome. This would require the agreement of all the Member States including the United Kingdom. The long standing constitutional relationship between the Island and the United Kingdom dictates that the United Kingdom would only support such a step if it is seen by the insular authorities to be in their best interests.

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# CHANGES DUE SOON TO COMPANIES LAW

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At the time of going to press, amendments to the Companies (Jersey) Law, 1991 are still pending. Nevertheless, the draft version of the proposed Amendment Number 6 has been widely circulated and it is anticipated that the variations to the existing legislation will become effective in the early part of this year.

The amendments will result in significant changes to local companies legislation, which include the introduction of new kinds of companies, the ability to re-domicile companies and the facility for companies to merge. Once the amendments are in force, it will be possible to establish three principal kinds of private or public company as follows:-

- **Par value companies** – companies which issue par value shares, but which may also have guarantor members
- **No par value companies** – companies issuing no par value shares, but which may also have guarantor members
- **Guarantee companies** – companies with only guarantor members. It will be possible for some members of any of the above three types of company to have unlimited liability.

The principal features introduced by Amendment No. 6 are:

- It will be possible for private companies to have just one member

- Companies may, in future, be established as either limited liability or unlimited liability companies. That is to say, the liability of their members will either be limited or unlimited
- Members of limited liability companies will be able to limit their liability either by shares or by guarantee
- Companies with shareholders (whether limited or unlimited) may also have members whose liability is limited by guarantee. These so called 'Hybrid companies' can be particularly useful in a variety of transactions;
- The share capital of companies

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## SIGNIFICANT CHANGES TO LEGISLATION

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may either have an expressed nominal value (par value shares) or have no expressed nominal value (no par value shares) – but not both;

- Arrangements for re-domiciliation of companies. These arrangements will allow a company incorporated anywhere outside Jersey with equivalent provisions in its companies laws, to cease to be incorporated there and instead become a Jersey registered company. Similarly, a Jersey

incorporated company will be able to change its domicile to another jurisdiction. In each case, consent will be required from the Financial Services Commission and there are provisions to safeguard the interests of shareholders and creditors;

- Arrangements for two companies to merge and continue as a single company. There are provisions to safeguard minority shareholders and creditors;
- Arrangements for the Royal Court to sanction a moratorium order to protect a company that is in financial difficulties but where there is a real prospect that the difficulties will be resolved or that, by granting the order, the company's assets will be realised in a more advantageous manner.

The amending law also includes a considerable number of other minor changes to the principal law, including changes that relate to the redemption of share capital, to the definition of distributable profits to the provisions relating to winding up of companies.

***We shall in due course publish comprehensive notes on the proposed amendments to the Companies Law and on the possible uses of the new types of companies. If you would like a copy, please contact either Robert Christensen, Managing Director of Volaw Trust Company or Ian Strang of Voisin & Co.***

# THE IMMINENT REGULATION OF FIDUCIARY SERVICES

Trustee and company administration services are an important part of Jersey's Financial Services industry. Trust companies and company administrators in Jersey are estimated to be responsible for the administration of assets well in excess of £100 billion. There is a range of different trustee and company service providers in Jersey, from the small businesses owned by an individual, employing only one or two people, to large businesses employing several hundred people. Some of them are associated with banks, accountancy firms and - as with Volaw Trust Company - law firms.

In the early 1990s, proposals were developed by Jersey's Financial Services Commission to regulate all sectors of the financial services industry that were not at that time regulated. The two principal sectors of concern were investment business (other than Collective Investments Funds) and trustee services/company administration.

A single law intended to regulate these two sectors (including independent financial advisers and others) was sent for industry consultation but after prolonged discussion was withdrawn. Subsequently a law to regulate investment business was introduced and came into force in 1999 - the Investment Business (Jersey) Law 1998.

The Commission has now turned its consideration to regulating fiduciary services and other administration services. The Edwards Report on financial regulation in the Crown Dependencies noted that the Island was committed to regulating this sector and commended the Island for this.

At present, there is no other jurisdiction in the world that regulates the providers of these services. The proposed legislation is ground-breaking.

The first draft of the new law was circulated in mid-1999 as the Fiduciary and Administration Business Law, a second draft was sent for industry consultation in Autumn 1999 as the Company and Trust Services Law. In early December 1999, a further version was distributed for industry consultation as the Financial Services (Extension) (Jersey) Law.

This law will amend the Investment Business (Jersey) Law 1998, changing its name to the Financial Services (Jersey) Law and bringing the regulation of fiduciary services and administration business within the scope of that law.

The effect of the new law is to widen the original law so that it now covers certain types of financial service business. Article 2 of the original law has been widened to

## Proposals are ground-breaking

take into account this amendment and defines financial service businesses as "Investment Business, the provision of Company Services or the provision of Trust Services".

Unsurprisingly, many of the provisions of the original law remain in the same form in the new law. Therefore, providers of trust and company services will, from the new law's introduction, be required to comply with the same requirements that have been imposed upon investment businesses under the original law. There are, however, some significant additional provisions in the new law.

These changes, although primarily introduced for the benefit of the regulation of trust administration companies, will

have implications for investment businesses as well. Anyone who requires further detail on the law in relation to investment business, or trust and administration business may obtain this advice from Voisin & Co.

The first notable new provision is contained in Article 3 which provides the Financial Services Commission with a discretion as to whether or not it is necessary for any individual or company carrying on or intending to carry on a Financial Service Business to register.

The second notable extension is contained within Article 10A, which gives powers to the Court in certain circumstances to appoint a person to manage the affairs of the financial services business upon application by the Financial Services Commission. The Court may make subsequent orders directing the appointed manager in the management of the affairs of the person or business. This provision is intended as an emergency provision when a person or business is carrying out financial services business and their application to register has been refused or their registration is revoked.

Finally, the new law contains a section dedicated solely to exemptions from registration for businesses providing trust or company services, separate from the exemptions applicable to investment businesses. These include exemptions for functionaries of collective investment funds, holders of advances, deposits etc. in connection with the supply of goods and services, connected companies and joint enterprises, businesses for which a registered person is responsible, non-executive directors (subject to the approval of the commission), as well as businesses providing a correspondence or administrative address and those which introduce a client to a provider of trust and company services.

## DIRECT ACCESS TO THE BAR

The legal profession on the mainland is in a state of flux. Most attention has been paid to the extension of the role of the solicitor, in particular his rights of audience. By contrast, little has been said about the abolition of important restrictions affecting practice at the Bar.

Time was (and not so very long ago) when the only way a member of the Bar could be instructed was by a solicitor provided with large quantities of good quality double foolscap and ample pink tape. In the mind of many that is still the case. Like many popular perceptions about the profession it is wrong.

Today one is just as likely to receive instructions (and give advice) by fax, telephone or e-mail as by the traditional bundle, and the person sending them is just as likely not to be a solicitor as to be one. Over half my practice does not come from solicitors.



We continue our series of guest articles with a further contribution from MR CHRISTOPHER SOKOL, a tax barrister at Lincoln's Inn.

Who else can instruct a barrister? This varies according to the area of law but so far as tax goes the classes are as follows:

- a solicitor
- any other qualified lawyer (of any jurisdiction) whether in private practice or in house;
- a qualified accountant;
- any person not resident in the United Kingdom.

From the Channel Island perspective it is a pretty open field.

Generally the Bar works on the cab rank rule: if a solicitor instructs you, and is prepared to pay your fee, and you are competent to do the work, then you must do so. You are not permitted to turn it away.

That rule does not apply other than to solicitors. Some members of the Bar accept

direct access work, others do not. Generally within any particular field there will be a consensus. At the tax Bar, for example, all practitioners would accept direct instructions from a qualified accountant, but virtually no one would accept instructions directly from a lay client, even if resident outside the United Kingdom.

What are the advantages and disadvantages of direct access to the Bar from the point of view of the non-solicitor professional client? There is, in fact, only one disadvantage; you have to prepare a set of instructions. This is not difficult to do, but it is not easy to do well. It is important because it will determine the value you derive from the advice. If you do not set out the relevant facts and ask the right questions you are unlikely to get the right answers.

Against that the advantages are considerable. First you have direct access to the highest level of expertise in a rigorously regulated and highly competitive profession. If someone is still in practice at the Bar after ten years it is because he or she generally gets it right.

Not only will you get the best specialist advice, but you will get it from someone

who has unique experience in having to defend his views.

Second, there is no possible conflict of interest. You are not at risk of losing the lay clients to another professional firm - the Bar is simply not equipped, logistically or psychologically to handle them.

Third, you get what you pay for. Barristers are not permitted to enter into any sort of work sharing arrangement or to delegate. If you want Mr Smith's advice you get it. Not Mr Smith's deputy assistant's second junior - because he does not have one.

Fourth, it is the cheapest option. I will repeat that for those who thought they misread it. It is the cheapest option. Most members of the Bar work for an average hourly rate for which members of other professions of equivalent seniority and standing would not get out of bed. There is a minuscule minority of barristers who earn very large sums, but to suppose that is typical of the profession as a whole is like imagining that the actors you saw last night on the television soap enjoy the same pay packet as Richard Gere or Madonna.

Last, but by no means least, every barrister is a judge in embryo - though most are content to stay that way. I once

had a conference with a very wise old instructing solicitor, who knew no tax, and a very bright young accountant with an encyclopaedic knowledge of the Taxes Acts.

The accountant and I differed. The lay client turned in frustration to his solicitor. 'I have two different opinions here. Who should I listen to.' 'Well,' said the solicitor, 'I haven't the faintest idea who is right, but I do know that when this goes on appeal the man who is going to decide it will be a lawyer, not an accountant.'

A word on the subject of clerks. The clerk is what is fashionably called a 'facilitator': he is there to make the system run smoothly and effectively, to resolve problems and to keep the client happy. A good clerk will go to great lengths to do this. He will look at papers and quote fees for different members of chambers, for different sorts of advice in advance, he will know who in his set has particular specialities and who can safely do the job within the time scale required. Like his principal he is there to help. If you are unlucky enough to fail to get that service from any set of chambers (clerk or barrister) go elsewhere. You will be more welcome than you may suppose.

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## A NEW PARTNER AND A FRENCH VISITOR

**V**oisin & Co are delighted to announce that Michael Preston became a partner of the firm with effect from 1 January 2000.

Michael was born in Jersey and educated at Victoria College. He graduated with a degree in business law at Coventry Polytechnic and subsequently passed the Law Society final examinations at the College of Law in Chester. After a period of articles with the firm of Taylor Vinters in Cambridge, he qualified as an English Solicitor in 1991 and joined Michael Voisin & Co. in 1993 as a legal assistant.

He was sworn as a Jersey Advocate before the Royal Court on 14 January 1999 and works within the firm's litigation department where he specialises in commercial and trust litigation. He will continue to work alongside Advocate Ashley Hoy and Dexter Flynn, English Solicitor, within the same department. Advocate Preston also deals with personal injury and medical negligence actions and is a member of the Association of Personal Injury lawyers.



Advocate Michael Preston



Miss Caroline Thiébot

**A** young French lawyer is currently spending six months with Voisin & Co to learn more about Jersey's legal system and, in particular, the mysteries of trusts and equity jurisprudence. Caroline Thiébot is a native of Cherbourg (on the Contentin Peninsula) and, as a lawyer of Norman extraction, feels a strong affinity for the Channel Islands.

She was a student of the Université de Caen, where she graduated with a Master of Business Law degree in 1998.

More recently she has been living and working in Paris where she gained experience of French and international tax law.

Continuing her studies in the area of taxation, Caroline passed her "Diplôme d'Enseignement Supérieur Spécialisé de Fiscalité Appliquée" at the Université de Paris V in June, 1999.

She joined the firm on 1 November 1999 in order to learn about the operation of offshore financial centres.

While working for Voisin & Co and Volaw Trust, she is studying local law with a view to qualifying as a Jersey advocate.

This newsletter does not purport to give legal advice and should not therefore be relied upon as such. For professional advice on any of the matters referred to herein please contact Voisin and Co.

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