

JERSEY BRIEF

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VOISIN & CO. ARE UP TO SPEED

During the past year we have experienced rapid growth in the number and value of instructions to act in mergers and acquisition (M&A) transactions. This growth has occurred not just in local, Jersey based businesses but also in transactions involving companies established in Jersey but conducting their business outside the Island.



Voisin & Co. recently acted as Jersey legal advisers to the Kirch Group (a German media giant, now known as Formel Eins Beteiligungs GmbH) in its involvement in the take-up by Speed Investments Limited, a subsidiary of German production company EMTV, of an option to purchase an additional 25% of SLEC (Holdings) Limited for the consideration of US\$1billion. SLEC (Holdings) Limited owns the television rights for the worldwide activities of Formula 1 motor racing, and this deal appears to have had far reaching implications for the future of the sport.

Our M&A experts have also worked on the following recent instructions:

- the acquisition by Nedbank through Nedkor Bank Corporation of the whole of the issued share capital of Fleming (Jersey) Limited including operations in Guernsey and the Isle of Man.
- the acquisition of AIB Central Asian Investment Company which involved taking over a former listed collective investment fund, which has subsequently been taken private.
- preparing for the acquisition of a UK Investment Trust by a Jersey SPV on a

share for share basis. The acquisition was to be made on behalf of another UK Investment Trust and the use of the Jersey SPV had certain UK tax advantages and in particular avoided UK Stamp Duty.

Our Commercial team has wide experience in acting for banks in the financing of M&A activity and various capital markets issues raising capital for major acquisitions outside Jersey, including mergers in the banking area and acquisitions in the insurance field (*see for example the article on the Channel Islands Stock Market in issue 16 of Jersey Brief*).

Voisin & Co.'s managing partner Ian Strang is responsible for our Commercial area, aided by a team that includes Bill Gibbon, Kate Anderson and Andrew Le Quesne. With the continuing consolidation in the banking sector and the world-wide growth in mergers and acquisitions, their range of experience in providing solutions for complex problems has enabled the firm to handle an increasing number of instructions in this area.

For more information about our services relating to mergers, acquisitions or commercial law matters, contact Ian Strang (ianstrang@voisinlaw.com) in the first instance.

COMMITTED TO QUALITY

Jersey Brief has a fresh new look, but the aim of this publication remains the same: to provide you with information on issues related to Jersey's legal and fiduciary arenas in an easily digestible format.

The values behind *Jersey Brief* reflect those of Voisin & Co. and Volaw Trust Company: a commitment to provide an informed and authoritative service which our clients and contacts can trust. Contact any of our staff mentioned for further information on any of the matters in these articles, and you can be assured of the same commitment.

We have recently revised the Library section of our web site, which now includes more detailed versions of many of the articles in this newsletter, as well as our Briefing Notes, which provide a valuable outline of many various aspects of Jersey law and practice. With 15 categories of interest and hyperlinks between related documents, navigation is quick and easy.

Browse through our online Library at www.voisinlaw.com or www.volaw.com, and subscribe to new articles on specific topics or receive this newsletter electronically by signing up online. And don't forget to bookmark www.voisinlaw.com or www.volaw.com to your 'favourites' folder, which you will find a useful reference source for all legal and fiduciary matters relating to Jersey.

Fuller versions of many of the articles in Jersey Brief may be found in the Library section of our web site
www.voisinlaw.com or www.volaw.com.

JERSEY AND THE OECD'S HARMFUL TAX COMPETITION INITIATIVE - AN UPDATE



In issue 16 of *Jersey Brief* we commented on Jersey's position as regards the OECD's initiative on so-called 'Harmful Tax Competition'. Jersey was among 35 states classed as 'tax havens' in the OECD's second report in June 2000. So far, nine of these states have committed to "eliminate their harmful tax practices", but the Channel Islands have not yet reached a mutually acceptable agreement with the OECD on changes to their tax regimes. Jersey and Guernsey have agreed to provide a united Channel Islands response to the OECD.

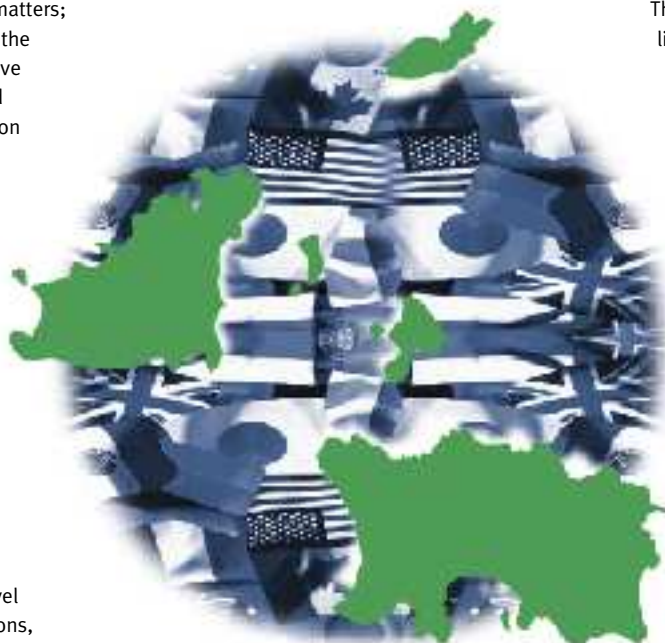
The Channel Islands authorities are willing to subscribe to the three broad principles of the OECD's initiative, which are: the effective exchange of information on tax matters; transparency in the operation of the legislative, legal and administrative provisions of the tax regime; and non-discrimination in the operation of the tax regime between residents and non-residents.

The Jersey and Guernsey authorities have reiterated their position as co-operative and well-regulated finance centres committed to tackling criminal activity. They are, however, unwilling to enter into an advance commitment with the OECD until they can be sure that the economic interests of the Islands are protected, and that there is a level playing field with other jurisdictions, particularly those OECD states with which the Islands compete.

The OECD's initiative has been controversial from the outset: many commentators have said that tax competition between nation states, far from being harmful, ensures that governments spend their tax revenues wisely and so minimise the tax burden on their

states that refuse to reform their tax practices, despite their laws and practices being similar to those of countries on the preliminary list, shows blatant double-standards and is an affront to the norms of international relationships. Finally, the initiative is seen by many as an attack by the larger OECD countries on the sovereign right of states to determine their own fiscal policies, and is tantamount to bullying.

The OECD now finds itself having to defend its proposals, and shift its own position. There is pressure for a more multilateral approach towards its negotiations, and



following hostile criticism of their methodology from the Caribbean offshore centres, the OECD representatives agreed to form a working group representing OECD member states and states listed in the report. This group has been tasked to consider a mutually acceptable political process in which the broad principles of the initiative can be turned into commitments, to examine how to continue the dialogue begun in the Caribbean, and how the recently created OECD Global Forum might evolve in a more inclusive way.

On 10 May this year, the US Treasury Secretary Paul O'Neill threw the whole initiative into disarray by announcing that he shared "many of the serious concerns that have been expressed recently about the direction of the

OECD initiative" and that he was "concerned about the potentially unfair treatment of some non-OECD countries." He called upon the

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OECD to focus on improving cross-border exchange of information to prevent illegal tax evasion and he made it clear that the United States will not agree to any initiative that forces changes to the tax regime of any state.

The OECD is considering its position in the light of the shift in the US policy. If other OECD member states follow the US, the initiative is likely to be restricted to preventing illegal tax evasion. In that event, the Channel Islands' authorities would be expected to enter into a commitment that is restricted to more effective information exchange and transparency in their tax regimes. Some of those states that have already put in place arrangements to amend their tax regimes may then feel that having entered into advance commitments has particularly disadvantaged them.

Whatever the outcome of the OECD's initiative, the States of Jersey is likely to propose alterations to the Island's tax regime in the near future to ensure that the Island's business environment remains competitive. This may mean reducing the rate of tax on certain activities undertaken within the Island, as well as maintaining tax-exempt status for certain types of company. Such changes will have significant consequences for the Island's fiscal position and the States will have to consider how it can raise revenues from other sources and/or reduce government spending. A consultation document on the Island's taxation system is expected later this Summer, which we shall examine in a future edition of *Jersey Brief*.

The OECD's initiative has been controversial from the outset

citizens. The same commentators suggest that the OECD's initiative is driven by certain OECD member states which stand to increase tax revenues by the international harmonisation of taxes. Furthermore, the exclusion of OECD member states from the original 1998 report and the preferential treatment of its member

A more extensive version of this article can be found in our online Library at www.volaw.com/library.asp

JERSEY TO PROMOTE ITS QUALITY STATUS

In issue 17 of *Jersey Brief*, we reported upon the establishment of a new agency, Jersey Finance Limited, which will be promoting Jersey's reputation as a long established and highly regarded international finance industry. It has now been announced that the new agency has appointed one of the Island's most senior bankers as its Chief Executive. Phil Austin, who was previously deputy chief executive at HSBC Bank plc in Jersey, took up his new post in May.



Phil Austin

Mr. Austin, who has a banking career spanning 33 years, will be an ambassador for Jersey's finance industry setting out its appeal as one of the world's leading international finance centres to a global audience of financial

institutions, professional advisers and individual investors. Jersey Finance Ltd.'s primary role will be to help both maintain and enhance the Island's reputation as a stable jurisdiction of the highest quality. The new body will be taking its message about the quality of the location to existing and potential clients overseas at a series of roadshows, conferences and top level meetings.

On taking up his new post, Mr. Austin commented: "Jersey's finance industry has a remarkably diverse range of financial services for corporate customers and private clients, provided by some of the world's leading financial institutions. It has been an established international financial centre for nearly 40 years, has led the offshore industry with some of its ground-breaking legislative judgements for investors, and continues to provide the necessary regulatory framework that enables the financial institutions based here to provide the innovative products required by international investors."

Robert Christensen, Managing Director of Volaw Trust Company, is a non-executive director on the board of Jersey Finance Limited.

THE BANKER'S DILEMMA

In the decision of the Court of Appeal in *Bank of Scotland -v- A Limited & Others*, the position of a bank fearful of the suspicious activities of its customers was considered.

The Court reaffirmed that its discretionary power to grant interim declarations would only be used where there was a real dilemma requiring intervention. It would not be regarded as a substitute for financial institutions taking decisions, which were their own commercial responsibility.

The Bank of Scotland became suspicious of its customer due to movements on a particular account. The Bank reported matters to the Commercial Crime Bureau, and then on advice,

obtained an injunction preventing itself from making any payments from the account. The customer subsequently issued proceedings against the bank, which proceedings led to the discharge of the injunction and an order that the Bank pay costs.

The Bank had feared that if it had paid out money from the customer's account, it could be liable to third parties as a constructive trustee and that, if it did not pay out, anti-tipping off legislation would prevent it being able to defend itself against an action by the customer.

The Court of Appeal held that the appropriate defendant to such an application would be the

Serious Fraud Office, not the customer. Such an application would protect a bank from the criminal aspect although, it would not automatically provide protection against actions by customers or third parties. However it was the Court's view that it was almost inconceivable that a bank which took the initiative in seeking the Court's guidance would subsequently be held to have acted dishonestly so as to incur accessory liability.

The decision highlights the need for banks and other institutions to operate with a high degree of awareness as to their customers' activities and to seek directions from the Court at an early juncture.

JERSEY LEADS THE WAY

Jersey was the first regional sponsor of a Clipper 60 for the Times Clipper 2000 round the world yacht race. Competing against entries from seven British cities, the event is a unique experience for selected crewmembers to sail the identical 60-foot yachts 34,000 miles around the world in a competitive environment. Volaw Trust Company and Voisin & Co. are proud to be sponsoring Jersey's boat which, after the first 11 races, is leading the fleet.

Winning the last four races means that the Jersey crew has overtaken the early leaders Bristol, whose reversal of fortunes is reflected in Jersey's recent successes. At the time of

writing, the fleet is crossing the Indian Ocean toward Cape Town, and with their experience and confidence growing, Jersey Clipper is looking in good shape to prolong their winning streak.

In the final stages, the fleet will cross the Atlantic from the Cape of Good Hope to Brazil, then head north to New York from where they will sail directly to Jersey for the penultimate stopover in September 2001. In the next edition of *Jersey Brief* we shall report on the fortunes of Jersey Clipper at the end of the gruelling year's racing, and hope that we have backed the winner!



You can keep pace with the race on the Internet at www.jerseyclipper.com or at www.clipper-ventures.com

CHANGES TO HOUSING LAWS

No person may buy or lease property in Jersey without the consent of the Housing Committee and consent will only be given in certain specific circumstances. It is also possible to lose one's qualifications by leaving the Island. Two aspects of the Housing Law have recently been amended.

Persons now only need to be ordinarily resident in the Island for a continuous period of nineteen years in order to be able to purchase property as opposed to twenty years.

In addition, some categories of persons can now still retain their qualifications even if they leave

the Island for a single period of up to five years.

For further information on any aspect of Jersey's Housing laws or property matters in general, please contact Simon Habin (simonhabin@voisinlaw.com) of Voisin & Co.

LEARNING THE LAW

After a hard day at the office most people want to put their feet up and relax. Not so for three of Voisin & Co.'s legal assistants, who are currently studying law degrees by distance learning. Lee Ingram, Karen Bechelet and Katherine Thorne (*left to right in photo*) are each following different programmes to reach the same goal. While Lee is following a two-year syllabus at a private college, SPR Law, Katherine is studying a two-year post-graduate course and Karen a four-year undergraduate course at Nottingham Trent University Law School.

Their courses include several residential weekends during the year where they work through what they have studied at home. Telephone and e-mail support is readily

available from tutors, and the university web site is an invaluable resource.

The three students came to us from varied backgrounds: Lee was working in finance, Katherine trained as a primary school teacher and Karen was in the Police Force. For all three there are great advantages to working in a law firm while studying: Apart from the practical experience gained, after their graduation they will be able to start working towards the Jersey Advocacy exams having fulfilled the requirement of working in a Jersey law firm for two years. They will have also gained a good insight into the different areas of law practiced by Voisin & Co. to enable them to form their preferred career path.



Voisin & Co. also offers a bursary scheme to the most promising full time law students. Further details of this scheme may be obtained from Annette Ware, our Manager - Human Resources.

VOISIN & Co.'s COMPUTERS MAKE SWEET MUSIC



When the partners of Voisin & Co. decided to upgrade the computer system to run on Windows 2000, new Pentium 3 PCs were purchased to replace the existing ones running Windows 95. Rather than consign 30 perfectly good PCs to 'computer heaven', their hard drives were reformatted to remove all sensitive data, and they were found a suitable home at Jersey's Beaulieu Convent school.

Beaulieu's Head of Music, Leigh Saunter, has already added sound cards and other software

to 10 of the PCs which have enabled the girls in his classes to take their understanding and enjoyment of music to a new digital dimension.

Several Jersey schools now share the PCs at Beaulieu for music studies from Key Stage One (age 11 up) to Music Technology 'A'-level. So we're hoping that Jersey's first teenage number 1 recording won't be far away...

The trade marks of Microsoft Corporation and Intel Corporation are acknowledged.

This newsletter does not provide or offer legal, financial or other advice upon which you may act or rely. Specific professional advice should always be taken in respect of any individual matter. For professional advice on any of the matters referred to herein please contact:



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