

## Funds Update

### January 2010

#### The latest news for the Guernsey funds sector

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##### > 20:20 in 2010

2009 was an interesting year for new fund launches. Given the recent experiences of both fund promoters and investors, there was a renewed focus on asset classes and matching them with the appropriate legal structure. More generally, there has also been focus on the structuring of funds as a result of recent difficulties.

For more detail on recent fund trends in Guernsey, please [click here](#).

##### > Accountants unable to count on Legal Professional Privilege

The recent English High Court's decision in *Prudential v Special Commissioners* held that legal professional privilege covers advice from lawyers but not accountants. Tax accountants should take particular note.

The ruling makes it clear that it is not the legal nature of the advice itself that attracts privilege but the fact that the advice was given by a member of the legal profession.

As a result advice given by accountants will not attract the legal professional privilege granted to identical advice given by a lawyer. Documents held by accountants relating to a client's potential tax liabilities may therefore become available to HMRC in certain circumstances. It is important to note that this case does not alter the position with regards to litigation privilege.

##### > Collas Day releases FAQ's on the CISX

Collas Day has recently published a 'Frequently Asked Questions' document on its website on the listing of investment funds on the Channel Islands Stock Exchange. The FAQs can be found [here](#).

## > Jurisdiction Clauses Offshore

Recent rulings in *Bank of New York Mellon v GV Films* and *Winnetka Trading Corporation v Bank Julius Baer & Co Ltd* (a Guernsey Court of Appeal decision) confirmed the alignment of English and Guernsey authority in relation to the wording of jurisdiction clauses. Such clauses must be construed in accordance with their own terms in each case. However as a general rule jurisdiction clauses which do not specify whether they are intended to be exclusive or non-exclusive, but which specify that the parties intend to *submit their disputes* to a particular court, tend to be construed as exclusive jurisdiction clauses. Clauses stating simply that the parties submit to the jurisdiction of the court in question would be more likely to be deemed non-exclusive.

These decisions are important to jurisdictions like Guernsey that have a high volume of international clients and counterparties. A loosely drafted jurisdiction clause could have expensive consequences as some P.I. insurers typically limit their cover to litigation in their "home jurisdiction". As the volume of litigation continues to grow this is certainly one to watch.

## > A new Corporate Governance Code for Guernsey

The Guernsey Financial Services Commission (the "GFSC") released a consultation paper on its new Code of Corporate Governance (the "Code") earlier this week. The Code addresses the requirements for achieving sound corporate governance and will affect all Companies in the regulated finance sector in Guernsey.

The Code covers governance issues under the following 8 broad topics:

1. The Board
2. Directors
3. Business Conduct and Ethics
4. Accountability
5. Risk Management
6. Disclosure and Reporting
7. Remuneration
8. Shareholder and Stakeholder Relations

The content of the Code is categorised in three different levels; (1) "Outcomes" which *must* be achieved, (2) "Best Practice Provisions" which *should* be achieved and (3) Guidance. The consultation paper contains both the Outcomes and Best Practice Provisions. However the Guidance section will be the subject of a second consultation later in the year.

Companies subject to the Code will be expected to comply with it by **1 January 2011**. On 30 April each year, companies will be required to submit a "comply or explain" report to the GFSC stating their compliance with all levels of the Code (or satisfactorily explaining their non-compliance) in the preceding calendar year.

Failure to either comply with the Code or adequately explain non-compliance will be taken into consideration by the GFSC in the granting and monitoring of licences, registrations and authorisations.

The consultation paper can be found [here](#) and any comments should be provided by 11 February 2010.

## > Risk and Regulatory Service

Collas Day will shortly be launching a complete Risk and Regulatory service to assist its regulated clients. Watch this space for further details.

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