

## What is driving current M&A activity in Guernsey?

Insights - 17/07/2023

While global mergers and acquisitions activity shrank to its lowest level in more than a decade in the first quarter of 2023, as rising interest rates, high inflation and fears of a recession soured the appetite of companies for dealmaking, Guernsey's deal volumes remain relatively buoyant.

Global mergers and acquisitions (**M&A**) volumes during the first quarter slumped 48% to \$575.1 billion as of March 30, compared to \$1.1 trillion during the same period last year, according to data from Dealogic. When split down by region, this can be seen as a global phenomenon; M&A volumes dropped 44% to \$282.7 billion in the US and 70% to \$81.87 billion in Europe while deal volumes in Asia Pacific fell 29% to \$176.1 billion.

### What sectors are driving M&A activity in Guernsey?

While the underlying causes of the slowdown in deal-making seem set to persist for some time, cooling the market overall, we are confident there will be busy pockets of deal-making activity in the offshore market in 2023. In particular, deal-making in Guernsey is being driven by the private equity investment appetite for regulated business, buoyant mineral prices and consolidation of offshore businesses.

Within the Guernsey financial services industry, mergers and consolidations in the fiduciary and insurance sectors have been particularly prevalent in recent years. We have also seen an increase in mergers in the e-gaming and mining industries. In addition, the public M&A market in Guernsey has been experiencing relatively high levels of activity over the past 18 months, particularly in relation to listed companies in the infrastructure, financial services and real estate sectors.

### Why is Guernsey an attractive jurisdiction for M&A deals?

Guernsey is home not only to corporate asset holding vehicles which are the targets of these

M&A transactions, but also the domicile of a large number of investment funds which make up a material proportion of the buyers or sellers in M&A transactions and which are, increasingly, providers of non-bank debt to fund M&A transactions. Guernsey also is a key domicile for holding companies forming part of larger structures which are the subject of such M&A transactions.

All these provide reasons why Guernsey has been involved in so many M&A deals even during a downturn, more generally, in the current market.

With this trend likely to continue in the near to medium term, we discuss briefly the key legal considerations for leading on a M&A deal in Guernsey.

## Key legal considerations

The key legal considerations for any transaction in Guernsey stem largely from The Companies (Guernsey) Law, 2008, as amended (**Companies Law**), which provides the legal framework for a Guernsey company's operation in all areas, including any M&A activity.

In addition, the UK Panel on Takeovers and Mergers (**Takeovers Panel**) may regulate takeovers and mergers in Guernsey where they fall within the ambit of its UK City Code on Takeovers and Mergers (**Takeover Code**) if they are considered 'public companies'. The Takeover Code will apply to transactions undertaken by 'public companies' that are:

- takeover bids and merger transactions
- transactions which have the objective or potential effect of obtaining or consolidating control of the relevant company
- partial offers to shareholders for securities in the relevant companies
- unitisation proposals (i.e. offers) which compete with another transaction to which the Takeover Code applies

The Takeover Code does not apply to open-ended investment companies, but does apply to closed-ended investment companies, and the Takeovers Panel will generally take account of the place of residence of the majority of the directors when deciding whether the Guernsey company's place of central management and control is in the UK, the Channel Islands or the Isle of Man.

If the transaction involves a change of control of a business which is regulated in Guernsey - such as a bank, insurance company, investment manager, administrator or trust and fiduciary business - the consent of the Guernsey Financial Services Commission (**GFSC**) will also be required. To obtain this consent, the buyer must provide the GFSC with evidence of its suitability as a new controller of the regulated entity, and it is normal for a buyer to commence this

process before the sale and purchase agreement is signed. Such change of control notifications may also need to be made where a parent undertaking of a GFSC licensed entity is acquired or subject to a merger.

In addition, other potential regulatory approvals required could be required under Guernsey's merger control regime (i.e. competition approval). The merger regime derives from The Competition (Guernsey) Ordinance, 2012 requires certain mergers and acquisitions in Guernsey to be notified to the Guernsey Competition & Regulatory Authority (**GCRA**) for approval prior to the transaction being completed. The GCRA regulate any merger or acquisition which satisfies a turnover test relating to turnover arising in Guernsey and the Channel Islands.

## At the forefront of high-profile Guernsey-based transactions

Ogier's Guernsey M&A team has maintained its position at the forefront of high-profile, cutting-edge M&A transactions, and has continued to be a leader in the Guernsey market in both number and value of deals, having represented both public and private companies, financial sponsors, boards of directors and financial advisors.

Ogier continued throughout 2022/2023 to advise clients on a range of intricate and complex deals, combining innovative perspectives and commercial awareness, looking at situations holistically and managing all aspects of a deal for our clients, and not just the legal basics. While we commonly assist on transactions where UK counsel take the lead, we are increasingly seeing our teams being asked to lead Guernsey-based transactions.

Examples of the Guernsey team's role as legal advisor in Guernsey-lead transactions during this time include:-

- advising **Marco Capital Holdings Limited**, a European property and casualty run-off insurance specialist, on its acquisition of **Humboldt Re Limited**
- advising French gaming player **Focus Entertainment** on its acquisition of **Railsimulator.com**, the parent company of **Dovetail Games**, an award-winning UK-based developer and publisher. **Dovetail Games** has become a definitive reference point for the train sim genre and has a strong track record for creating immersive and authentic sim-experiences
- advising on the **£79.6 million** acquisition of **HWSI Realisation Fund Limited** by means of a Royal Court sanctioned scheme of arrangement

## How can Ogier help?

At Ogier, providing good client service on an M&A transaction is not about drafting a suite of pro-forma documents, and simply 'getting a deal done' for a particular client. We understand that the deals we are instructed on are transformational business deals for our clients and the

team strives to consistently demonstrate our ability to understand our client's business and operating environment by identifying any potential issues and tailoring our advice to suit their specific needs.

In order to provide an efficient and robust outcome for clients, we recognise that working effectively in a team is also critically important for M&A lawyers - not only with the client and other professionals in Ogier, including respected finance, competition, commercial property and regulatory lawyers - but also with outside counsel, tax advisors and other service providers. Transactional work is seldom a solo activity and our full-service M&A practice at Ogier brings together best-in-class lawyers from all major offshore jurisdictions, as well as Luxembourg and Ireland.

## About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

## Disclaimer

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