

Guernsey – An Island Pursuing the Future

By Derek Baudains, Chief Executive Officer
Louvre Group,
Guernsey, Channel Islands

Guernsey's financial services industry is not one industry, but a number of complementary specialist industries that together put Guernsey in the premier division of international finance centres.

Guernsey is one of Europe's leading fund administration centres and has seen strong growth in the value of funds under management, together with continued expansion in its fiduciary sector.

Whether looking at the financial services industry as a whole or one sector in particular, the pace and enthusiasm for change amongst both the politicians and the industry is ensuring that the momentum necessary for the continued success of Guernsey as a major finance centre is sustained.

"If you always do what you always did, you will always get what you always got" (unattributed). "It is a funny thing about life; if you refuse to accept anything but the best, you very often get it." (W. Somerset Maugham).

These two sayings complement one another and have special relevance for Guernsey which, as a leading finance centre, has been driven by the need to be the best and, as a consequence, has never been afraid of change. However, to change in an orderly fashion requires several important and interacting elements – key amongst them being a clear strategy, all parties working together for a common cause, and the ability to listen and see, then adapt and innovate.

Statistics Reveal Success

A scan across the spectrum of financial services shows that funds under management in Guernsey at the quarter end, June 2008, had a year on year growth of 33.2% to reach a record high of GBP207.2 billion; bank deposits stood at another record of GBP128.1 billion. Since

being established 10 years ago the Channel Islands Stock Exchange has listed over 2,700 securities and achieved recognition from both the UK and the USA for tax and regulatory purposes. The number of Captive Insurance Companies has risen to 368 and there are now 48 licensed banking institutions.

So, with change breeding success, how and why have the strategy and the interaction worked so well and what are the changes that have resulted?

The Strategy

The challenge and necessity to keep Guernsey's future buoyant has been to lay down a regulatory framework that will retain Guernsey's integrity, but at the same time provide the finance industry with the capability to not only attract new business, but to administer that business in a pragmatic, efficient and competitive manner.

More important, and with an eye on future change, was to ensure that any laws passed were flexible and able to evolve rapidly to meet the changing needs of the industry.

The result has been to dispel any fear

of change and to create a successful business environment with, firstly, the necessary controls, regulations and legislative structure that are acceptable to politicians, industry and clients alike; but secondly, the foundations on which new and innovative products can be created that are marketable around the world to both corporations and private clients.

So, what about specific changes that can illustrate these points and demonstrate the innovation and adaptability of Guernsey and the finance industry? An initial review of the fund and investment industry will clearly show the pace and enthusiasm for change.

The Protected Cell Company and Incorporated Cell Company

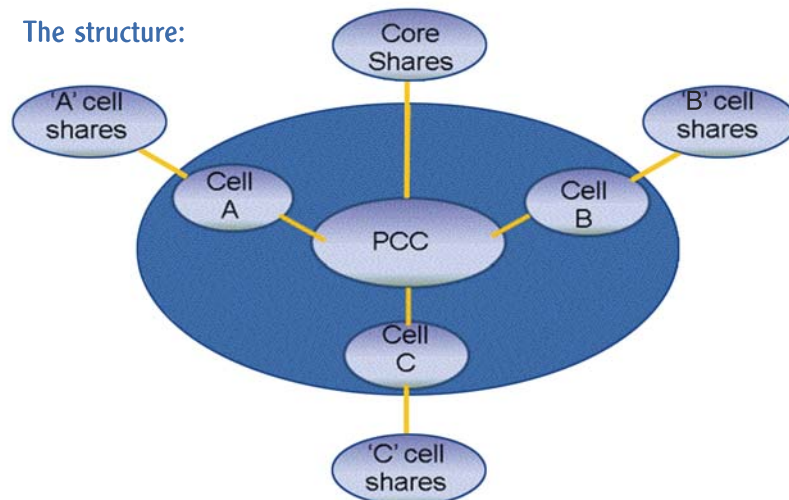
The flexibility of legislation is perfectly illustrated by the relaxation of the rules governing the use of the Protected Cell Company (PCC). PCCs were originally introduced by Guernsey in 1997 (and subsequently copied in over 30 jurisdictions) and are a structure that responded to the needs of the captive insurance industry. They also immediately became an invaluable tool for funds and securitisation structures. However, their use was strictly limited until it became clear that a relaxation in the rules surrounding their use would make them available for a range of commercial and wealth management structures, and greatly widen their use and appeal, particularly to private clients and their tax advisors.

Protected Cell Companies – the structure

Briefly, a PCC is a single legal corporate entity consisting of a core vehicle which has the power to create individual cells into which separate assets and liabilities can be placed and thereby segregated. Subject to consents, any Guernsey company can be incorporated as a PCC or, if required, an existing company can convert to a PCC.

The strength and attraction of a PCC lies in this "ring-fencing" of assets and

The structure:



liabilities, because the legislation expressly provides that the assets of any one particular cell are only available to the creditors of that cell – creditors of another cell having no recourse against them.

Similarly, following a change to the legislation, the core assets may not be utilised to satisfy cellular insolvency either, except in cases where there is a specific recourse agreement in place.

The relaxation of the rules now means that the private client advisor may consider the use of a PCC structure for segregating the assets and liabilities of their wealthy clients, for example yachts, property and portfolios, either by risk or purely for tax and estate planning purposes.

Extending the PCC – the Incorporated Cell Company

The extension of the PCC concept and the creation of the Incorporated Cell Company (ICC) were introduced in 2006. This was partly in response to a question over how the segregation of assets and liabilities between cells might be viewed by foreign courts. But the upgraded structure also provides greater flexibility and a more recognisable corporate structure.

Briefly, an ICC has the same basic structure and advantages as outlined for the PCC above. But, from that point on, the concept has been extended so, although an ICC has cells like a PCC, each cell is a separately incorporated, *separately registered, legal entity in its own right*.

This identifiable, separate legal identity brings the major benefit of facilitating commercial transactions by providing each individual cell with the ability to enter legitimately into binding, legal contractual obligations not only with third parties, but also with one another.

Incorporated Cell Companies – practical uses

The practical uses of the ICC are considerable, but the popular ones include: fund management where the segregation of high risk is essential (for example, derivatives); fund promoters wishing to use different managers or advisors for different cells, geographical areas or sectors; segregating intellectual property and research and development projects that have the potential for huge success; or segregating property and property portfolios by type (commercial versus residential).

The Channel Islands Stock Exchange (CISX)

The introduction of a stock exchange has extended the corporate services provided within Guernsey and is a natural adjunct to the funds sector in providing a one-stop-shop.

The CISX was established in 1998 and there is no doubt of the success with more

than 2,700 securities admitted to the Official List by the end of March 2008 and a 2007 trading turnover of GBP41 million on a volume of 49.9 million shares.

Other Changes

The Harwood Report

There have been many other significant recent changes. The review of the fund industry (The Harwood Report) completed in June 2006 and produced in close consultation between government and industry, recommended changes to streamline the industry and make it more attractive to potential clients.

Some of the regulatory changes suggested in the Harwood Report have been implemented already. Open-ended funds no longer require a principal manager. A regime for registered closed-ended funds was introduced on 1 February 2007. This regime offers a fast-track procedure to obtain consent under the Control of Borrowing Ordinance (COBO) for a closed-ended fund. If all papers are in order, the GFSC will grant COBO consent within three working days. The Guernsey licensed administrator of a registered closed-ended fund must obtain satisfactory due diligence on the fund's promoter and/or investment manager, which is similar to the approach taken for the three day fast-track approval procedure for Qualifying Investor Funds.

Change outside the Fund Industry

The continual search for opportunities to update legislation and create business opportunities has not been limited to the fund industry.

Guernsey's New Trust Law

A new Trust Law came in to force on 17 March 2008 (The Trusts (Guernsey) Law 2007). This updated the original 1989 law and is designed to give Guernsey a modern framework for trusts which is internationally recognised.

Private Trust Companies

Private Trust Companies (sometimes referred to as Family Trust Companies) are also gaining in popularity as increasing numbers of wealthy clients, particularly those from civil law jurisdictions who do not know, entirely understand or are not comfortable with the trust concept, like the idea of a structure that allows for tax, estate and inheritance planning, but at the same time allows them to retain some control over the assets.

There are proposals in the pipeline for the introduction of Foundation legislation, possibly similar to that found in Liechtenstein.

Company Law

A new Company Law came into force on 1 July 2008 (The Companies (Guernsey) Law 2008). Whilst there was not a great deal wrong with the old legislation, modernising and consolidating a number of pieces of legislation is a welcome move.

One other significant development is the introduction of a computerised registry which will streamline and reduce the time and cost required to incorporate a company in Guernsey.

Introduction of "0/10"

Guernsey introduced a "0/10" (zero-ten) corporate tax regime on 1 January 2008 under which nearly all companies pay no income tax on profits. Certain companies will pay slightly higher rates (10%-20%) on the profits from specified banking and other regulated activities and on rental income and profits from property development. As a consequence most Guernsey registered companies will be treated as resident for tax purposes, paying tax at 0%. For most companies the GBP600 annual exempt fee will no longer be required.

Change for change's sake – or targeted?

It is clear that the finance industry in Guernsey is never static, but where is the target market for all this change? Well, the geographical expansion of fiduciaries, either centred in Guernsey, or with offices in Guernsey, provides a clue.

Offices are being opened in centres such as Hong Kong to provide a bridge into China; Singapore for access to the Far East; Dubai to tap into the wealth in the Middle East; and Mauritius to focus on India.

All of these markets need products and services located in a tax efficient jurisdiction such as Guernsey.

China and India are the two growth economies and, aside from personal wealth, there will be the need for corporations to place investment vehicles and intellectual property that is being utilised in the West in a secure and tax efficient location. Dare it be mentioned again that PCCs and ICCs will be the ideal vehicles?

Lastly, although Shari'a law is strict on investments and interest, Guernsey has already launched its first Shari'a compliant funds. It is the pursuit of solutions and innovation in areas such as this that contribute to success.

Conclusion

Guernsey, as a financial centre, has never been afraid of change and has never rested on success. Close interaction between government, fund managers and fiduciaries continues to provide the infrastructure and the innovation needed to ensure that Guernsey will continue on its path of competitive innovation.

www.louvregruop.com