



# NEWHAVEN TRUST COMPANY (CHANNEL ISLANDS) LIMITED

## THE ROLE OF GUERNSEY IN INTERNATIONAL ESTATE PLANNING

For nearly 50 years Guernsey has hosted a fiduciary sector providing estate planning solutions to international clients. 2008 marks the tenth anniversary of the launch by the OECD of its initiative to combat what it then saw as undesirable cross border tax competition (OEC, Harmful Tax Competition; An Emerging Global Issue – 1998). That initiative triggered a programme of intense and continuing scrutiny of Offshore Financial Centres (“OFC’s”) by national and supranational agencies the scope of which has far exceeded the original OECD mandate. In parallel, major economies have driven through anti-avoidance legislation designed to combat domestic tax leakage which, as a generalisation has diminished the fiscal desirability of longer term estate plans which utilise mechanisms such as inter vivos settlements and testamentary trusts.

The question arises as to how Guernsey as a jurisdiction, and its fiduciary sector in particular, has adapted and evolved in these rapidly changing times?

### Jurisdictional Development

Like other leading OFC’s, Guernsey made remarkably quick progress in achieving recognition for its world class compliance and regulatory regimes. Guernsey is a fully co-operative jurisdiction and decided, at an early stage, that it would lead, rather than follow, the process of change. Guernsey has been scrutinised and endorsed by the International Monetary Fund (“IMF”) and the Financial Action Tax Force. In 2004 the IMF commented that “Compliance levels for OFC’s are, on average, more favourable than those of other jurisdictions assessed by the IMF in its financial sector work”.

In addition to establishing the Guernsey Financial Services Commission (“GFSC”) as an independent and professionally staffed regulatory body, Guernsey was amongst the first to effectively license and regulate the fiduciary sector with the enactment of the Regulation of

Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law 2000. Today the law, regulations and accompanying codes of conduct comprise a robust and constantly evolving framework policed by periodic visits to all licensees conducted by the GFSC.

Inevitably, political will has been regularly tested throughout this period and never more so than with the recent adoption of Guernsey’s so called “zero ten” system of taxation which results in the Island remaining materially tax neutral to non residents. Whatever the motivation, it takes considerable political courage to largely eliminate corporate taxation and to internalise the burden of tax generation so that it falls predominantly on the domestic electorate. Such is the continuing level of governmental support for Guernsey’s financial sector.

### Sector Development

Around 140 licensed trust companies operate from Guernsey holding an estimated £200 billion of assets. These firms employ 2,500 staff, roughly one third of the total finance sector workforce. In addition to trust companies there are licensed individuals who can act as co-trustees, protectors or company directors.

As the scale and scope of the fiduciary sector has increased specialisation and segmentation has emerged giving the consumer real choice. Many of Guernsey’s 50 licensed banks have their own trust operations both able and willing to supply a wide array of in house investment products and other services to fiduciary structures under management. Others, for example the trust companies owned by law firms, distinguish themselves by their ability to provide an extra skill or facility at the point of a transaction or when specialist advice is required. A third, and perhaps the fastest growing segment, comprises the

“independent” fiduciaries. These are businesses commonly owned and managed by experienced industry professionals which offer high levels of staff continuity coupled to an open architecture environment where “best in class” solutions are sought free from the conflicts of interest that can arise in bigger organisations.

Businesses specialising in solutions for corporates have developed dealing with everything from employee benefit schemes to balance sheet remote structuring and asset securitisation. However, at the heart of the fiduciary sector remains the high net worth individual with cross border interests and a desire to protect and enhance wealth over the longer term. Guernsey practitioners are well versed in the needs of these clients and the array of solutions available to them. It is for this reason that Guernsey has an enviable reputation for the provision of services to family offices.

Guernsey has materially enhanced the suite of products available to the estate planner. The Island pioneered the Protected Cell Company. Incorporated Cell Companies followed and both represent valuable wealth management tools. An Intellectual Property office was opened in 2006 and I.P. related legislation continues to be introduced to ensure this asset class can be effectively handled. The Channel Islands Stock Exchange (C.I.S.X.) continues to be a notable success with over 2,700 listings and plays its full part in more sophisticated estate planning exercises and in meeting the needs of family offices. Company law has been reviewed and automation of the Company Registry is ongoing.

Key to estate planning solutions is the prevailing trust law. The Trusts (Guernsey) Law 2007 represents a thorough review and modernisation in this important area. Major changes from the previous law include the ability to:-

- Create Purpose trusts
- Reserve or grant powers to a Settlor or third party
- Form perpetual trusts
- Clarify beneficiaries rights to information

The law also provides reasonable protection to retiring trustees without the need for chain indemnities, it revises the limitation period for actions alleging breach of trust, confirms that trusts can be vested over Guernsey land and abolishes the personal liability of directors of corporate trustees which potentially could arise as a consequence of 1989 legislation.

The working party responsible for the 2007 law has additionally paved the way for the future introduction of Foundations. This important development will increase Guernsey's appeal to clients from civil code jurisdictions. Added to the fact that Guernsey has recently appointed a representative in China to "spread the word" about Guernsey's financial sector it further emphasises the globalisation of the Islands appeal and client base.

## Future Development

OFC's will still face both scrutiny and barriers to entry even though transparency within the OFC's continues to increase. The influential Society of Trust and Estate Practitioners "encourages OECD countries to reciprocate with substantive and contemporaneous reductions in tax and regulatory barriers" (STEP – Policy on International Tax Information Exchange – November 2007). The leading OFC's are not holding their breath! The last ten years, however, have proved to be an invaluable opportunity for leading OFC's, including Guernsey, to evidence and show case their quality.

Guernsey will always benefit from its traditional advantages which include time zone, language, proximity to London and legal system. Add to this political support of the financial sector which is now clearly demonstrated, continuing economic stability, regulatory standards and a business friendly environment with developed infrastructure.

In 2008 the fiduciary sector can also demonstrate the maturity which comes from 50 years in business and real strength in depth. This coupled to a willingness to change and adopt to meet the real needs of a diverse client base is key to the future success of the sector.

Whilst the only certainty for the future is more and likely rapid change the vision of Guernsey's fiduciary sector is to be seen as a renowned centre of excellence for the provision of estate planning services to international clients. Given the pace of progress over the last 10 years that vision is not simply an aspiration.



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