

## A Fresh look at Guernsey

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MICHAEL BETLEY  
Group Chairman

Trust Corporation of  
the Channel Islands Limited  
PO Box 665, Roseneath  
The Grange, St Peter Port  
Guernsey, GY1 3SJ  
Channel Islands

Tel: +44 1481 730430 / Fax +44 1481 730460  
Email: [michael.betley@trustcorpci.com](mailto:michael.betley@trustcorpci.com)  
Website: [www.trustcorpci.com](http://www.trustcorpci.com)

## Guernsey Facts and figures

### BACKGROUND

Guernsey and the other Channel Islands were originally part of the medieval Dukedom of Normandy and became an English Crown possession when William The Conqueror (Duke of Normandy) became the King of England in 1066. The islands were the only British territory occupied by the German troops in World War II. Guernsey is a British Crown Dependency, but is not part of the United Kingdom or the European Union. The UK Government, however, has constitutional responsibility for its defence and international representation.

### HEADLINE FACTS

Location	British Isles/English Channel/Bay of St Malo
Time zone	GMT +1 hour in summer
Currency	Pound sterling (£)
Land area	78 sq kilometres (coast line 50 kilometres)
Capital	St Peter Port
Language	English
Airport	Direct to London and regional UK, France, Germany and Switzerland
IFC expertise	Investment funds/banking/fiduciary/captive insurance
Industries	Finance/tourism/horticultural/light industry

### PEOPLE AND SOCIETY

Population	65,605
Population growth	0.38% (2013 estimate)
Workforce	31,646
Unemployment	1.3%
Adult life expectancy	82 years
Residency	Whilst Guernsey is part of Europe for free movement of people, there is a restriction on residency and the right to occupy property which is split between local and open market property designation
Age of majority (suffrage)	16 years of age

**ECONOMIC**

GDP	£2bn (2012)
RPI	2.7%
Local market property price (average)	£447,628 (2012)
Finance sector contribution to GDP	39% (2012)
Number of banking licenses	32
Bank deposits	£84bn
Collective investment funds (AUN)	US\$286bn
Number of domiciled funds	860
Captive insurance entities	770 (Ranking 4 <sup>th</sup> globally)
Fiduciary licensees	148
International credit rating	Moody's AA+ (2012)

**GOVERNMENT**

Administrative description	Bailiwick of Guernsey (which includes the islands of Guernsey, Alderney, Sark, Herm and other smaller islands)
Constitution	Unwritten, partly statutes, partly common-law and practice
Legal system	Customary legal system based on Norman customary law and includes elements of the French Civil Code and English Common-Law
Political status	British Crown Dependency
Political system	Democracy with a unimarecal parliament (no political parties)
Head of State	Queen Elizabeth II (represented on the Island by the appointed Lieutenant Governor)
Head of Government	(1) Bailiff (who is the highest office on the Island appointed by the Monarch) (2) Chief minister (elected Head of the States of Deliberation)
Cabinet	Policy council elected by the States of Deliberation
Parliamentary body	States of Deliberation of 45 deputies (selected by popular vote)
Judiciary	In ascending order The Royal Court/Guernsey Court of Appeal/Privy Council (London)

Correct as at 2013 unless otherwise stated



## Fact sheet on the UK's relationship with the Crown Dependencies

This fact sheet is aimed at providing an introductory overview of the UK's relationship with the Crown Dependencies and the Islands' international personalities. For more detailed information on the Crown Dependencies, please see the Annexes to this document and the links to further reading at the end of this document.

### 1. Constitutional relationship

The Crown Dependencies are the Bailiwick of Jersey, the Bailiwick of Guernsey and the Isle of Man. Within the Bailiwick of Guernsey there are three separate jurisdictions: Guernsey (which includes the islands of Herm and Jethou); Alderney; and Sark (which includes the island of Brecqhou).

The Crown Dependencies are not part of the UK but are self-governing dependencies of the Crown. This means they have their own directly elected legislative assemblies, administrative, fiscal and legal systems and their own courts of law. The Crown Dependencies are not represented in the UK Parliament.

The Crown Dependencies have never been colonies of the UK. Nor are they Overseas Territories, like Gibraltar, which have a different relationship with the UK. The constitutional relationship of the Islands with the UK is through the Crown and is not enshrined in a formal constitutional document. HM Government is responsible for the defence and international relations of the Islands. The Crown, acting through the Privy Council, is ultimately responsible for ensuring their good governance.

The Queen is the Head of State of each Island and the Lieutenant-Governor for each Crown Dependency is Her Majesty's personal representative. The Lord Chancellor and Secretary of State for Justice is the Privy Counsellor with special responsibility for Island Affairs. At present, Lord Faulks is the Minister responsible for the conduct of Islands' business within Whitehall.

The Ministry of Justice is responsible for managing the constitutional relationship with the Crown Dependencies, which involves a variety of different responsibilities including involvement in key Crown Appointments; working with the Palace on assessing Crown Dependencies' Coins and Stamps; and processing their legislation for Royal Assent.

**However, as per the Justice Select Committee Report 2010, all UK Government Department have a responsibility to engage directly with the Crown Dependencies on their policy areas. The Annexes to this document contain information on how Government Departments should consult Crown Dependencies on relevant issues.**

## **2. Nationality and Immigration**

The British Nationality Act 1981 confers British Citizenship on all those with close connections with the UK, the Channel Islands and Isle of Man. The Islands have adopted the common format passport and the Lieutenant Governor remains the passport-issuing authority in the Islands.

Jersey, Guernsey, the Isle of Man and the Republic of Ireland, together with the UK, comprise the Common Travel Area. There is no immigration control between the UK and the Islands or between the Islands themselves. Rather, the Islands form part of the border for the British Isles as a whole.

## **3. Island Legislation**

The Islands' legislatures make their own domestic legislation.

Principal legislation made by the Islands' legislatures requires Royal Assent or sanction. The Ministry of Justice examines such legislation to ensure that there is no conflict with international obligations (including ECHR compliance) or any fundamental constitutional principles. This enables the Lord Chancellor to advise the Privy Council whether Her Majesty in Council can be advised to make an Assenting Order, and thereby grant Royal Assent. For non-reserved Isle of Man legislation the Ministry of Justice will directly inform the Lieutenant Governor when the Lord Chancellor is content that the delegated responsibility to grant Royal Assent may be exercised.

UK legislation rarely extends to the Crown Dependencies and should not be extended without first consulting the Islands' Authorities and obtaining their consent. In instances where it does extend, it may do so either by virtue of the Act itself or by Order in Council made with their agreement under an enabling provision contained in the Act which provides for it to be extended to the Crown Dependencies. An enabling provision for an Order in Council, known as a 'permissive extent clause' (PEC), in a Bill could take the following form: "Her Majesty may by Order in Council provide for any of the provisions of this Act to extend, with or without modifications, to any of the Channel Islands or the Isle of Man". For an Act to extend otherwise than by an Order in Council is now very unusual. Departments must consult the Crown Dependencies at the earliest opportunity in the event that extension is under consideration and a PEC should not be included in a Bill without the prior agreement of the Islands.

More detailed information on how to engage with the Crown Dependencies on UK legislation that may affect them is included in **Annex A – How to note on the extension of UK primary legislation to the Crown Dependencies.**

## **4. International Personality**

The Crown Dependencies are not recognised internationally as sovereign States in their own right but as "territories for which the United Kingdom is responsible". As such they cannot sign up to international agreements under their own aegis but can have the UK's ratification of such instruments extended to them, unless they have been entrusted to do so, as they have been in the case of Tax Information Exchange Agreements, and other agreements relating to taxation that provide for exchange of information on tax matters, with EU Member States, including the UK, the Organisation for Economic Co-operation and Development and the G20 member countries.

However, the Crown Dependencies are developing their international identities and in 2007, the then-Secretary of State for Constitutional Affairs signed an agreement with the Chief Ministers of each of the Crown Dependencies stating that the UK would not act internationally on their behalf without prior consultation and recognising that in international matters, particularly in relation to the EU, UK and Crown Dependency interests may differ. The agreements also set out a framework for the further development of the international identities of the Crown Dependencies. Copies of the framework agreements with each Crown Dependency are available on the Crown Dependencies Governments' websites (links in section 7 below).

## **5. Relationship to the European Union**

The Islands have a special relationship with the European Union provided under Protocol 3 to the UK's Treaty of Accession to the European Community. This relationship cannot be changed without the unanimous agreement of all the Member States of the Union. Under Protocol 3, the Islands are part of the customs territory of the Union and therefore Union customs matters, the common customs tariff, levies, quantitative restrictions and any measures having equivalent effect apply. There is free movement of agricultural goods and derived products between the Islands and the Union. Also included are measures relating to the trade in agricultural goods and derived products with third countries.

However, other EU Rules do not apply to the Crown Dependencies. Implementation of the provisions on the free movement of persons, services and capital is therefore not required, and the Islands are not eligible for assistance from the structural funds or under the support measures for agricultural markets. EU tax instruments do not apply, nor do the developing justice and home affairs initiatives or the Schengen acquis, although the Islands support improved judicial co-operation within Europe and have also voluntarily applied for recognised equivalent status in a number of key law and policy areas.

## **6. Treaties and international agreements**

Article 29 of the Vienna Convention on the Law of Treaties provides that "unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory". The long-standing practice of the UK when it ratifies, accedes to, or accepts a treaty, convention or agreement is to do so on behalf of the United Kingdom of Great Britain and Northern Ireland and any of the Crown Dependencies or Overseas Territories that wish the treaty to apply to them. The UK's ratification, accession or acceptance can also be extended at a later date.

This means that, when the UK is planning to ratify a particular convention or treaty, it should consult the Crown Dependencies about whether they wish to have it extended to them.

More detailed information on how to engage with the Crown Dependencies on International Treaties and Agreements that may affect them is included in **Annex B – How to Note on the extension of International Instruments to the Crown Dependencies** and **Annex C – How to Note on dealing with requests from the Crown Dependencies to extend the UK's ratification of international Instruments**.

## 7. Useful links

- **Justice Select Committee Report on the Crown Dependencies (2010):** [www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/56/56i.pdf](http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/56/56i.pdf)
- **The Isle of Man Government:** [www.gov.im](http://www.gov.im)
- **The States of Guernsey:** [www.gov.gg](http://www.gov.gg)
- **The States of Jersey:** [www.gov.je](http://www.gov.je)

**For more information please contact us:**

Ministry of Justice  
Law, Rights and International Directorate  
Crown Dependencies Team  
102 Petty France  
London  
SW1H 9AJ

Email: [crown.dependencies@justice.gsi.gov.uk](mailto:crown.dependencies@justice.gsi.gov.uk)

## The Guernsey Foundation

### INTRODUCTION

The Foundations (Guernsey) Law, 2012 (The “Law”) came into force on the 7 January 2013. The Law was drafted to be sympathetic to the foundations civil law heritage but set in an Anglo Saxon context. Whilst the foundation has many similarities to both companies and trusts it is an entirely different concept, as such a foundation is not a “hybrid” but exists within its own right, and in Guernsey, it is a creation of the Law with its own legal personality and characteristics.

### ITS USES

The foundation can be used for any legal objective or purpose. In practice, however, foundations will typically be used for philanthropic or wealth planning and succession purposes. Some common uses include:

- Acting as an asset holding and wealth management vehicle
- As an alternative to a trust for inheritance and succession planning and to avoid probate or forced heirship impositions
- To undertake a specific function or to avoid personal liability and to protect confidentiality
- As an alternative to a private trust company
- For charitable and non-charitable purposes
- To hold rights or entitlements
- To act as an orphaned holding vehicle (as an alternative to a non-charitable purpose trust) and to allow perpetual ownership or for private securitisations.

### REGISTRATION

The foundation is established through an application to the Registrar in Guernsey. The application must be undertaken by a Guernsey licenced fiduciary who will present the charter and a declaration made by the founder (or the agent on his behalf). The application will also

provide the details of the council members and the guardian (if any) and details of the registered office. The application must also identify if there are any disenfranchised beneficiaries. Following acceptance by the Registrar, a registration number will be provided and a certificate issued (see below for more information on beneficiaries). The name of the foundation will appear on the Register of Foundations. Only Part A of the Register is open to the public. This contains the name and registered office of the foundation, together with the name and address details of the first councillors and the guardian (if any). Part B is closed and remains confidential and contains details of the founder and the charter.

### WHY GUERNSEY?

The Law was drafted very much with wealth planning in mind and offers the founder both certainty and a great deal of flexibility in how foundations are structured and managed. The registration process also provides an appropriate degree of information whilst preserving confidentiality where required in relation to the founder, its constitution and the foundations financial records. The Law also allows migration of foundations both into and out of Guernsey, such that the founder and/or council members can re-domicile foundations, should they wish, now or in the future. Ultimately, however, Guernsey is internationally renowned as a centre of excellence for fiduciary services and wealth management and is expert at blending and managing complex structures from different domiciles in order to achieve the required wealth planning objectives. This level of expertise makes Guernsey a highly sought after jurisdiction when considering long term wealth administration needs.

The guardian (if one is appointed – see below) cannot act as a councillor whilst also holding the office of guardian.

The council, as the foundation’s executive, will be responsible for managing the assets of the foundation and carrying out its objects in accordance with the charter, its rules and the Law. Councillors can be individual persons or body corporates.

### **PURPOSE AND BENEFICIARIES**

The foundation must have a purpose, (e.g. to hold private company shares) but it does not have to have beneficiaries. Where there are beneficiaries, they will either be “enfranchised” (with the right to hold the councillors to account and receive copies of relevant information) or “disenfranchised” in which case they have no such information rights. A guardian (see below) must be appointed to represent the interests of disenfranchised beneficiaries or where there is a purpose which needs to be enforced.

### **GUARDIAN**

The founder can be a guardian but a guardian cannot be a councillor. The guardian must be appointed and is only required if the foundation has either been established for a “purpose” without beneficiaries or where the beneficiaries are “disenfranchised” i.e. have no rights to information. The guardian’s function is to either enforce the purpose or hold the councillors to account and to represent the interests of the beneficiaries. The guardian owes a duty to the founder and the beneficiaries to act in good faith and en bon père de famille. A guardian can be a person or a body corporate.

### **REGISTERED AGENT**

A Guernsey registered agent is only required where none of the foundation officials are otherwise licenced by the Guernsey Financial Services Commission. Registered agents will be entitled to obtain and hold the foundation records at the foundation’s Guernsey registered office. Registered agents must, themselves, be licenced fiduciaries.

### **PUBLICLY AVAILABLE INFORMATION**

The Guernsey Registry is the official Registry in which maintains all of the statutory documents and details in accordance with the Law. The public at large are unable to scrutinise the Guernsey Registry for any specific information concerning a specific foundation. However, all registered users (being licenced corporate service providers) have the ability to search the registers. This will include identifying the name of the foundation, its registration number and the name and address of the current foundation officials (councillors and guardians).

Part A (as set out in schedule 1 clause 4 (2)(a) of the Law) is available for public scrutiny and contains the following information:

- (i) The name and registered number of the foundation
- (ii) Name and address of the councillors
- (iii) Name and address of any guardian
- (iv) Details of the registered office.

Part B (as set out in schedule 1 clause 4 (2)(b) of the Law) contains other documents which are required by the registrar but are not open to the public and will remain private. These documents include:

- (i) Statement of the purpose
- (ii) All documents filed including the charter (note rules are not required to be filed).

For further information please contact;

**MICHAEL BETLEY**  
Group Chairman

Trust Corporation of  
the Channel Islands Limited  
PO Box 665, Roseneath  
The Grange, St Peter Port  
Guernsey, GY1 3SJ  
Channel Islands

Tel: +44 1481 730430 / Fax +44 1481 730460  
Email: [michael.betley@trustcorpqi.com](mailto:michael.betley@trustcorpqi.com)  
Website: [www.trustcorpqi.com](http://www.trustcorpqi.com)

## INTRODUCTION

The Foundations (Guernsey) Law, 2012, came into effect in January 2013.

All information in this document is correct as at 30 September 2013. The information contained in this comparative was compiled by representations from the Law firms of Appleby and Withers Worldwide, both firms having been constituted prior to the final legislation being drafted.

### Foundations – A Jurisdictional Comparative

	Guernsey	Jersey	Liechtenstein	Panama
<b>Law</b>	The Foundations (Guernsey) Law, 2012.	Foundations (Jersey) Law 2009.	Persons and Companies Act, 1926 (as amended, 2008), Art. 552 §§1-43.	Private Interest Foundation Law 1995.
<b>Regulatory Board</b>	Guernsey Financial Services Commission.	Jersey Financial Services Commission.	Charitable foundations are supervised by the Liechtenstein Public and Land Registry (Family foundations are generally unregulated).	Panamanian Public Registry.
<b>Minimum Assets</b>	Any property comprising initial endowment.	Does not require an initial endowment.	Assets or cash with the value of CHF/€/US\$30,000.	Assets or cash with the value of US\$10,000.
<b>Registration Fee</b>	£100 for a registration within 24 hours; £350 within two hours.	£200 (or £400 for a 'same day' incorporation).	Registration is only compulsory in the case of charitable foundations (CHF700). Family foundations need not be registered (and therefore their existence is not a matter of public record), although the foundation's core information (date of establishment, objects, members of the foundation board, legal representative) need to be submitted to the registrar (CHF300). Stamp duty may also be due, in the case of family foundations this amounts to 2% (subject to a min of CHF200 and a max CHF250,000).	US\$350.
<b>Required Documents</b>	Charter & Rules.	Charter & Regulations.	Charter ('Statutes'). Separate regulations if provided for in Charter.	Charter.

	Guernsey	Jersey	Liechtenstein	Panama
<b>Required Parties</b>	<ul style="list-style-type: none"> <li>• Founder</li> <li>• Council</li> <li>• Guardian – only required if there are disenfranchised beneficiaries</li> <li>• Beneficiaries/ Purposes</li> <li>• Resident agent – if neither a councillor nor a guardian are Guernsey licensed fiduciaries</li> </ul>	<ul style="list-style-type: none"> <li>• Founder</li> <li>• Council (including at least one Qualified Member)</li> <li>• Guardian</li> <li>• Beneficiaries/ Purposes</li> </ul>	<ul style="list-style-type: none"> <li>• Founder</li> <li>• Council Member (at least two)</li> <li>• Protector/ Supervisory Body (optional)</li> <li>• Auditor (for supervised foundations)</li> <li>• Beneficiaries/ Purposes</li> </ul>	<ul style="list-style-type: none"> <li>• Founder</li> <li>• Council Member (at least one corporate member or three individuals)</li> <li>• Beneficiaries/ Purposes</li> <li>• Local agent (compulsory)</li> <li>• Protector/ Supervisory Body (optional)</li> </ul>
<b>Annual Fees</b>	£500 except if a Guernsey- registered charity, which is £0. Corporate income tax – 0%; no other Guernsey taxes apply.	£150 plus £100/£200 to be registered as an ISE for GST purposes.	Annual corporate income tax of 12.5% on its net income with a minimum of CHF1,200. The Liechtenstein foundation can be taxed as a Private Asset Structure if the conditions are met.	US\$400 administration fee paid to the government.
<b>Request for local representation</b>	If neither a councillor of the foundation nor a guardian of the foundation are Guernsey licensed fiduciaries, the foundation must appoint a “resident agent”. The resident agent must be both a Guernsey licensed fiduciary and resident in Guernsey. Such resident agent has powers to inspect foundation documents and information. Only a Guernsey licensed fiduciary may apply to register a foundation.	The Jersey Law requires that there is a qualified person on the foundation’s council (the “Qualified Member”). A qualified person is a person licensed under the Jersey Financial Services Commission (Jersey) Law 1998 to conduct foundations business. Only a Jersey licensed fiduciary may apply to register a foundation.	At least one member of the foundation’s council that is authorised to manage and represent the foundation must be a qualified professional with place of residence in Liechtenstein or another Member state of the European Economic Area.	There is nothing under the Panamanian Law that states that there must be a person who is regulated involved in the governance of the foundation.

	Guernsey	Jersey	Liechtenstein	Panama
<b>Protector/ Guardian</b>	A Guardian is required only where there are no beneficiaries (i.e. the foundation is for a purpose only) or where the beneficiaries are disenfranchised ie they do not have a right to trust information. Both the founder and body corporates are able to be appointed as guardians.	A Guardian is required. The Guardian has a monitoring function to ensure the foundation's council carries out its functions. The Qualified Member or the Founder (but no other council member) may act as the Guardian of the foundation. A protector is optional.	Optional.	Optional. The law contains a non-exhaustive list of powers which may be conferred on a protector/supervisor y body.
<b>Continuation</b>	An overseas foundation (ie a foundation with legal personality registered or established under a law other than Guernsey law) may apply to be registered as a Guernsey foundation. Application for migration into Guernsey – £100; application for migration from Guernsey – £1,500.	Bahamas Foundations, Liechtenstein Foundations, Panama Private Interest Foundations, St Kitts Foundations, Nevis Multiform Foundations, Maltese Foundations and Jersey companies (each a 'Recognised Entity') may continue as Jersey foundations (and vice versa) for an administrative charge of £500.	A Liechtenstein foundation may redomicile to/continue in, a foreign jurisdiction. There is a charge of CHF700.	A Panama foundation may redomicile to/continue in, a foreign jurisdiction.
<b>Mergers</b>	There is no ability for a Guernsey foundation to merge with any other entity.	There is ability for: <ul style="list-style-type: none"> <li>• Two or more Jersey foundations to merge; and</li> <li>• One or more Jersey foundations to merge with one or more Recognised Entities.</li> </ul>	There is no ability for a Liechtenstein foundation to merge with any other entity, although it may be converted into an Anstalt or a Treuunternehmen with legal personality.	There is no ability for a Panamanian foundation to merge with any other entity.

	Guernsey	Jersey	Liechtenstein	Panama
<b>Beneficiaries' Right to Information</b>	Generally beneficiaries have a right to information. However this can be restricted such that the beneficiaries are "disenfranchised" and have no rights although a guardian is then required.	<p>No, unless the charter or regulations explicitly provide otherwise.</p> <p>A "person of standing" (which includes a beneficiary) may however, make an application to the Royal Court for the terms of a foundation to be properly enforced.</p>	<p>In the case of a revocable foundation, the beneficiaries have no information rights. In addition, the Liechtenstein Law contains possibilities to restrict the information rights of beneficiaries by transferring those rights to other bodies such as an internal controlling body (similar to a protector) to carry out supervisory duties. In such cases, the rights of the beneficiaries can be limited to an indefeasible minimum (their own rights, the foundation's purpose, the organisation of the foundation). In the case of charitable foundations, which are generally subject to the supervision of the authorities, the beneficiaries have no information rights.</p>	<p>The rights of the beneficiaries are set down in the foundation charter or By-Laws, or by resolutions passed by the foundation's council.</p>

	Guernsey	Jersey	Liechtenstein	Panama
<b>Publicly Available Information</b>	Only “Part A” of the register is publicly available. This records the name and registered number of the foundation, the name and address of the councillors and the guardian (if any) and the details of the registered office. As part of the registration process the charter must also be filed with the registrar but may only be disclosed in certain circumstances (eg as part of criminal investigations).	The charter is the only document that is publicly available.	The charter of a private foundation is not a public document (unless the foundation requests to be registered).	The charter is the only document that is publicly available.
<b>Charitable/ Philanthropic Purposes Permitted</b>	Yes	Yes	Yes	Yes
<b>Time Period</b>	None	None	None	None
<b>Corporate Body as Founder/ Protector/ Council Member</b>	A corporate body may act as a founder, councillor or guardian.	A corporate body may act as founder, council member (whether Qualified Member or not) and Guardian.	A corporate entity may act as a Founder, Protector or a Council member.	A corporate body may act as a Founder or as a Council member.

	Guernsey	Jersey	Liechtenstein	Panama
<b>Reservation of Powers</b>	Subject to the terms of the constitution, certain powers can be reserved i.e. to amend, revoke or vary the terms of the constitution including its purposes and to terminate the foundation – limited to the duration of a founder’s life, or where a corporate founder, 50 years from creation of the foundation.	In principle there is complete flexibility – the terms of the charter and regulations can provide that any particular power or powers of the foundation may either be reserved to or subject to the veto of the founder or any other person.	Subject to the terms of the charter, an individual (as opposed to corporate) founder may reserve certain powers i.e. to amend, revoke or vary the terms of the constitution including its purposes and to terminate the foundation – limited to the duration of the founder’s life.	No express provisions contained in the law.
<b>General Duties</b>	Councillors have a duty to the foundation to act in good faith in the exercise of their functions. Guardians owe a duty to the founder and beneficiaries to act in good faith and en bon père de famille to enforce the constitution and the purpose and in the exercise of their functions.	The members of the council have no fiduciary duties to the beneficiaries of the foundation. Their duty is to administer the foundation in accordance with its objects (as set out in the charter). The role of the Guardian is to ensure that the council performs its role properly. The role of the Qualified Member involves ensuring that the foundation is not used for criminal purposes, such as money laundering.	The members of the council owe no fiduciary duties to the beneficiaries of the foundation. Their duties are owed to the foundation. Their duty is to administer the foundation in accordance with its objects (as set out in the charter). Professionals may not limit their liability.	Subject to the terms of the charter, the foundation council is accountable to the beneficiaries and any protector/ supervisory body. A beneficiary may challenge any acts of the foundation that may damage the rights conferred upon him/her, either by applying to the protector/ supervisory body (if any) or the court.

## Purpose Trusts in Guernsey

### THE CONCEPT

Traditionally trusts were established to provide either for beneficiaries or to further a charitable purpose. A Purpose Trust is a type of trust which has no beneficiaries but instead exists for advancing a non-charitable purpose of some kind.

Trusts for charitable purposes are also technically Purpose Trusts, but they are usually referred to simply as Charitable Trusts. People referring to Purpose Trusts normally are usually taken to be referring to Non-Charitable Purpose Trusts.

In most jurisdictions, they are usually unenforceable (there are limited exceptions) but in 2008 Guernsey enacted legislation specifically to promote the use of Non-Charitable Purpose Trusts.

When using offshore structures to assist in tax, estate planning or company restructuring, it may be of considerable assistance to create a trust in which no company, or individual, has a beneficial interest.

### GUERNSEY LAW

The terms of a Purpose Trust must define the valid purpose(s) to which the trust fund may be applied. Under Guernsey law a trust for non-charitable purposes must not be so uncertain that its performance is rendered impossible, contrary to public policy, or immoral.

There are no other limitations imposed by law. A trust established to hold assets or to exercise functions is expressly stated to be valid. The law also envisages hybrid trusts where there may be beneficiaries and purposes.

A Purpose Trust must be created in writing to avoid problems caused by incomplete oral gifts.

Without beneficiaries there is no ascertainable person to enforce a Non-Charitable Purpose Trust. Therefore an 'Enforcer' must be appointed to act. A positive duty will be introduced to compel trustees to appoint an Enforcer if there is none in office. Equally if the Enforcer is not capable of acting or alternatively is refusing to act the trustee must initiate action to have the Enforcer replaced.

It is the fiduciary duty of the Enforcer to police the trustees and to enforce the stated purposes of the trust. A trustee cannot also serve as an Enforcer of the same trust but the law does permit employees or associated companies of a trustee to serve as Enforcer.

The Guernsey Trusts Law introduced in 2008 specifies that there is no limit upon the duration of any Guernsey trust, including Purpose Trusts.

## Guernsey image rights

In late 2012 Guernsey introduced an innovative image rights legislation and image rights register (The Image Rights (Bailiwick of Guernsey) Ordinance, 2012).

### BACKGROUND

We live in a world where image is everything and the cult of celebrity is pervasive. Overnight, sportspeople and entertainers can be converted into globally recognised brands. However, such treatment raises questions about how these brands can be protected through intellectual property (IP) rights.

Traditionally, the main way to protect the IP in a personality has been through trade mark rights. While there are other related IP rights that come into play, such as copyright and design rights, trade marks are the most relevant. However, they only go so far in protecting the rights of the modern celebrity, or brand image and whose interests are more wide ranging than have historically been the case.

The Guernsey image rights legislation addresses the needs of the modern marketplace by allowing a personality to formally register not only images but also other characteristics of themselves.

### GUERNSEY IMAGE RIGHTS

The Guernsey image rights legislation works on two levels: the registered personality right; and the underlying image rights.

A 'personality' is a person's brand i.e. the name by which the person is known. To be registerable, it must be the personality of one of five types of person or subject, referred to as the *personnage*:

- a natural person (alive or died in the last 100 years)
- a legal person (ie corporate)
- a joint personality (two people intrinsically linked)
- a group (eg sports team or pop group)
- a fictional character (of a human or non-human)

Assuming the person or subject meets one of these five descriptions then their personality can be registered along with any associated images. These can be any characteristics associated with the personality, such as aliases, signature, voice, mannerisms, gestures or other indicia. The main benefit of this is to create a formal registerable right that provides clarity and flexibility.

### PROTECTION AND EXPLOITATION

Personality and image rights effectively cover all manner of activity conducted in the personality's name, which means they offer a high degree of protection when considering the use of the celebrity's image by unauthorised third parties.

In addition, the personality and image rights can be licensed, assigned and generally dealt with separately, allowing complete freedom in their use and operation by the personality or their licensees.

# Fact Sheet

The Guernsey legislation specifically allows for the image rights of dead personalities to be registered, if they died within 100 years of the rights being registered. This allows flexibility for estates and their beneficiaries to effectively control and commercialise these valuable rights long after the personality's death – another world-first for these rights.

However, it should be noted that the Guernsey legislation also includes express provisions balancing these rights with other interests, including the right of free speech, parody or satire and news reporting.

## REGISTERING

A registered image right agent in Guernsey is required to undertake the registration process. A selection of the registration fees is as follows (initial and renewals):

- Natural person: £1,000 for ten years
- Legal person: £2,000 for ten years
- Image: £100 for three years

For more information visit: [www.guernseyregistry.com](http://www.guernseyregistry.com)

## International Pension Plans for employers

If you're an international employer looking to provide a company pension scheme for your global employees, then make sure you consider the advantages of an IPP and in particular the specific benefits that schemes from providers in Guernsey can offer.

### WHAT IS AN IPP?

An international pension plan (IPP) is a pension plan established in an 'offshore' location, such as Guernsey, which is the home country of neither the employer nor the employees, to provide benefits for the global employees of an international employer.

It is not generally possible for an international employer to retain all its global employees in a single pension plan established in its home country. This might be due to economies of scale, lack of local pension vehicles, legal and tax issues. Therefore it may be that an IPP is the only viable solution. The IPP can be either 'approved' or not depending on the needs of the trustee/sponsor. An advantage of 'approval' is that the ability to accept transfers in or make transfers out may be enhanced.

### WHAT DOES AN IPP IN GUERNSEY OFFER?

- Many different employers within the same multinational group can join the same IPP
- Flexibility over benefit design, even for individual members of an IPP
- No limits on the amount of employer or employee contributions
- Employer contribution rate flexibility; pace of funding for defined benefit arrangements and contribution rate structure for defined contribution schemes
- No requirement to comply with EU 'cross border' restrictions and to be 'fully funded' at all times (for defined benefit arrangements)
- Freedom of investment choice offered to members (for defined contribution arrangements)
- No income tax or capital gains tax on the assets within the IPP, near gross roll up
- No limits to the value of the benefit/fund which can be accumulated for an individual member
- Option to take entire account as lump sum on leaving service or retirement (subject to being over age 50)
- No requirement to purchase an insurance based annuity (although may do so)
- Pension income paid gross without the deduction of income tax
- Able to transfer and receive benefits from other pension arrangements

## Protected Cell Companies (PCCs)

### INTRODUCTION

Guernsey was the first jurisdiction to introduce the concept of PCCs in 1997. It has proven extremely successful, such that both new and existing companies have taken advantage of the cell structure facility. In recent years other jurisdictions have subsequently adopted PCC legislation, but Guernsey retains its worldwide prominence due to the experience of the insurance managers and the fact that regulation is at a cellular level, which offers additional security to cell owners.

PCCs were established under the Protected Cell Companies Ordinance, 1997 (as amended) and was Guernsey's response to the demand from companies who wished to take advantage of the captive approach to risk management, but did not want to establish their own captive.

The introduction of PCC legislation has laid the foundation of Guernsey's rent-a-captive business. It has proved of particular interest to the promoters of association captives, international groups involving numerous autonomous subsidiaries and insurers who wish to separate the life funds relating to different policyholders into separate cells, or classes, within a PCC. A more recent development has been the use of PCCs as Special Purpose Vehicles (SPVs) to facilitate either the transaction of capital market transactions into insurance transactions or risk transfer conduits to enable securitisation of future income streams.

A number of insurance managers have established and administer their own PCCs in Guernsey. These allow low cost access to captive facilities for companies who do not wish to establish their own captive.

### THE LEGISLATION

The Protected Cell Companies Ordinance, 1997 (the "PCC Ordinance") came into force in Guernsey on 1 February 1997. It provides for a distinct type of company, ie a PCC to be established. The PCC Ordinance has been amended by The Protected Cell Companies (Amendment) Ordinances, 1998 and 2006.

***The significance of the PCC Ordinance is that it permits a PCC to have separate and distinct "cells". The critical point is that the assets and liabilities of a cell are segregated from those of other cells and those assets are not available to creditors of other cells in an insolvency.***

This is in contrast with the situation familiar to corporate lawyers where, notwithstanding the fact that a company's share capital may be structured in order that certain classes of share capital represent indirect rights to specific assets or profits deriving from specific assets of a company, in an insolvency all of a company's assets are generally available to all the creditors of the company.

### USES OF A PCC

Companies which can be established as, or converted into, PCCs are:

- Collective investment schemes authorised under Section 8 of The Protection of Investors (Bailiwick of Guernsey) Law, 1987;
- Closed-ended investment companies approved under The Control of Borrowing (Bailiwick of Guernsey) Ordinances, 1959 to 1989;

- Insurers licensed under The Insurance Business (Guernsey) Laws, 2002 or those insurers which are exempt from licensing by virtue of Section 5 of the Insurance Law. Specific requirements of the Insurance Law relating to PCCs are set out in Appendix 1;
- Any class or description of company other than a licensed person provided that the company and its affairs are administered by a licensed person with a place of business in Guernsey.
- The concept of separating out assets within a single corporate entity and treating them and the matching liabilities as if they belong to separate corporate entities has a precedent in England in Rule 5 of the Insurance Companies (Winding Up) Rules 1985. Rule 5(2) provides:
  - “The assets of the company which in accordance with ... are available for meeting the liabilities of the company attributable to its long term business shall ... be applied in discharge of those liabilities as though those assets and those liabilities were the assets and liabilities of a separate company.”

### FORMATION OR ESTABLISHMENT OF A PCC

A company may either be incorporated as a PCC or an existing company may be converted into a PCC. Whichever route is adopted, the written consent of the Guernsey Financial Services Commission must be obtained.

The GFSC may from time to time vary or revoke any term or condition subject to which a consent was granted and impose any new term or condition in relation to any consent.

### Single Legal Entity

Although a PCC may have created one or more cells, ***a PCC is a single legal entity and the creation by a PCC of a cell does not create in respect of that cell, a legal entity or person separate from the PCC itself.***

### ATTRIBUTION OF ASSETS AND LIABILITIES

***The PCC Ordinance adopts the concept of “attributing” assets and liabilities to cells.***

Accordingly, it is important that any transaction in respect of a cell is correctly identified as referable to the relevant cell in the contractual documentation.

## Incorporated Cell Companies (ICCs)

### INTRODUCTION

As of 1 May 2006, companies may be established as incorporated cell companies. Legislation has been in place in Guernsey since 1997 for the formation of PCCs, initially for collective investment funds and insurers and in 2005 extended to all types of companies.

An ICC is an extension of the principle of a PCC with a number of essential differences.

### THE LEGISLATION

The Incorporated Cell Companies Ordinance, 2006 (the “**ICC Ordinance**”) provides for a distinct type of company, an ICC, to be established.

***The significance of the ICC Ordinance is that it permits the existence of separate legal entities (incorporated cells) within another legal entity (the ICC).***

***Unlike a PCC which has separate and distinct “cells” whereby the assets and liabilities of a cell are legally segregated from those of other cells, an ICC effectively houses one or more incorporated cells within it, each ring-fenced by virtue of their separate legal existence from other incorporated cells and the ICC itself.***

### USES OF AN ICC

Other than certain regulated companies, there are no restrictions as to the type of companies which can be established as, or converted into, ICCs.

### FORMATION OF AN ICC

A company may either be incorporated as an ICC or an existing company may be converted into an ICC. Whichever route is adopted, the written consent of the GFSC must be obtained.

The GFSC may from time to time vary or revoke any term or condition subject to which a consent was granted and impose any new term or condition in relation to any consent.

The name of an ICC must include the expression “Incorporated Cell Company”, “ICC” or any other cognate expression approved in writing by the GFSC.

### STATUS OF AN ICC

An ICC is a company and accordingly is subject to all the requirements of companies’ legislation unless specifically provided otherwise.

**PROTECTED CELL COMPANIES**  
**(Protected Cell Companies Ordinance 1997)**

versus

**INCORPORATED CELL COMPANIES**  
**(The Incorporated Cell Companies Ordinance, 2006)**

Detail	PCC	ICC
Single legal entity	Yes	No
Extra protection	No	Yes
Direct cross ownership	No	Yes
New cell resolution	Board	Special
Cell registration	No	Yes
Cell M & A	No	Yes
Separate accounts	No	Yes
Spin off	No	Yes
Unrestricted use	No	Yes

## Developing uses of Guernsey Cell Companies

Guernsey pioneered the corporate cell concept and its application and innovation continues as the cellular approach becomes more understood.

The traditional use of cell companies, to simplify and commoditise insurance products and segregate asset classes for investment funds, still dominates but increasingly private wealth advisors are using cell companies for more bespoke structuring solutions.

A cell company can create underlying cells which can hold assets and liabilities segregated from those assets or liabilities held in other cells. This ring-fencing is fundamental to the cell company concept; segregation ensures that cellular assets are only available to creditors and shareholders of that cell. This creates greater certainty and significantly improves on the more traditional single company, multi class “umbrella fund” holding different asset classes.

Legislation in Guernsey has developed beyond the Protected Cell Company (PCC) with the introduction of the hybrid Incorporated Cell Company (ICC). The PCC and ICC models are very similar but there are significant differences. The PCC establishes underlying cells which do not have their own legal personality; the core and its cells are together a single entity. Each cell is part of the corporate body but can act independently of the other cells which allow segregation of each cell’s affairs. An ICC creates distinct cells which are each separately incorporated so that each cell can conduct business, own assets and incur liabilities in its own rights. As a consequence, the ICC strengthens the cellular proposition where assets and liabilities need to be more robustly ring-fenced. The versatility of the Guernsey legislation means that a PCC can convert to an ICC and ICC cells can be hived off and become independent.

The cellular approach can offer greater administrative and accounting ease with corresponding cost savings. The savings in repeat transactions are particularly significant especially for collective investment funds and securitisations where the initial structure and core documents can be rolled out very quickly; follow on transactions become highly efficient. Legislation now allows cell companies to undertake any business although licences will be required if conducting regulated

business. This new freedom of use expands the potential of the cell company offering and creating an exciting tool for the private client and corporate adviser.

### GROUP COMPANY STRUCTURES

The cell company offers structural efficiency, economies of scale, flexibility and control which makes it a highly attractive alternative to the traditional parent/subsidiary group relationship.

For accounting purposes, cells do not have to have consolidated financial statements; specific groupings of cells can be consolidated for audit purposes so that unrelated economic interests can remain separate and confidential. Migration provisions allow cells to be transferred out and converted into a different type of corporate vehicle so the cells, rather than assets, can be sold. Similarly foreign companies or other types of Guernsey company can be migrated and/or amalgamated into the cellular family making the framework highly versatile.

### PRIVATE TRUST COMPANIES AND FAMILY OFFICE SOLUTIONS

The common approach to private trust companies (PTCs) is to establish a corporate vehicle (usually exempt from regulatory licensing) to act as the corporate trustee for a specified group of trusts. Through an ICC or PCC the PTC can now act both as trustee and establish the structural ownership of underlying cells which will hold the various assets. Each cell can be established to own different types of assets or to segregate income from capital. The cells can be owned by the same or different trusts separating beneficial interests while allowing the administration to be performed by the PTC administrators; ultimately creating management efficiency and structural mobility. When considering the family office environment, ICCs can be used either in isolation or in combination or encompass the wider family interests. The family office may wish to separate out certain functions or contractual responsibilities. For example different cells can be used for employment of staff, treasury management, investment advisory services and joint venture, or pooled, investment projects. Some family offices offer a multi-office facility to other families which

can use the cellular approach to separate its own family facilities with those of third parties.

### **HYBRID FAMILY STRUCTURES AND CONSOLIDATION OF PERSONAL INTERESTS (THE MULTI-PURPOSE VEHICLE)**

Each cell of an ICC has its own constitution. This offers the potential to allow cells to have different share classes where voting rights (control) can be held separately from dividends rights (enjoyment). This hybrid opportunity creates enormous potential for families to manage their own affairs through an ICC where enjoyment rights can be separated from direct ownership. The ability to have cells incorporated differently (for example: limited by shares or by guarantee) provides the opportunity of creating structures similar to the European Anstalt (Establishment) or Stiftung (Foundation). Coupled with the use of common law trusts, the combination creates a powerful range of options.

The cell company structure also enables individuals to house all their interests within a single administrative framework. Different cells can own different types of assets or contractual obligations which can contract or lend to one another (in the case of an ICC but not a PCC). Therefore an entrepreneur, with a varied range of interests, can consolidate these affairs within a single structure – (such as an ICC) combining consultancy services or contractual obligations with asset ownership and administration. The ICC is truly a multi-purpose vehicle.

### **INTELLECTUAL PROPERTY**

Cell companies offer a unique way of exploiting intellectual property portfolios. The intellectual property rights (IPR) can also be registered in Guernsey; this enhances ownership value and protection from misuse. The introduction of specific image rights legislation is likely to boost the popularity of managing IPRs through cell companies. Income and royalties can be segregated as can different contracts. Jurisdictional franchises or IPR leases can be undertaken from different cells. Sports celebrities can separate out their offering between different cells. For example: product placement, foreign earnings, image rights, branding and product development.

### **REAL ESTATE OWNERSHIP**

The same principle applies to real estate ownership. At parent level you have the potential of

consolidating single ownership if that is desirable or the core can merely be the manager of the property and the underlying cells can have different ownership. Consolidating property ownership through cells will ease bank borrowing, collateralisation and even securitisation of rental streams. Cells can 'float'; specific cells can be migrated or converted into other types of company. This disengagement process offers the ability to sell or transfer cells in isolation, if preferred, rather than transferring the property, should that be desirable.

### **INVESTMENT AND PRIVATE FUNDS**

The use of cell companies in the investment fund area is now well established. Pooled family investments can be established as a private fund with either a single manager or advising different cells holding specific family portfolios. Open-Ended Investment Companies (OEIC) can be structured using cell companies enabling different clients the ability to pool assets, through their own cells, under the same or different mandates: offering economies which were previously unavailable. Different cells can also have different rights allowing shareholders access to specific types of investment returns.

### **TAX PLANNING OPPORTUNITIES**

The cellular approach allows the tax adviser to undertake both straightforward and highly complex tax planning arrangements especially if coupled with the use of other structures. For the UK non-domiciliary foreign income can be segregated and capital repatriated through the use of different cells. Capital gains tax can be deferred while assets are managed actively at cellular level similar to an investment fund. For inheritance tax and succession planning cellular shares can be transferred to children allowing them access to future capital while income shares can be held in separate cells allowing flexible and strategic allocation of entitlements.

It can be seen that the cell company approach affords enormous new structuring and planning opportunities either on their own or blended with other types of traditional vehicles. Ownership via a trust or foundation can create further longevity through the separation of ownership and enjoyment of benefits. In addition, the ability to manage the corporate framework yet retain flexibility creates a cost effective and highly versatile solution.