



Guernsey Financial
Services Commission

Industry Presentations – 23 November 2012

Fiduciary Services Division Presentation

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I would like to begin by welcoming you all to the Fiduciary Services Division presentation. Later on this afternoon we will share with you some very interesting statistics and output from the annual return, which I hope will go some way to providing you with some genuine and reliable feed-back on the sector, and I really would also encourage you all to enter into discussion and debate during the session at the end.

So what were the key objectives for the Fiduciary Services Division in 2012?

The first was to produce a Code for Foundation Service Providers in anticipation of the Foundations (Guernsey) Law coming into force. This is on track for quarter one of 2013. In the circumstances the Division will very shortly be consulting on the terms of a Foundation Service Providers Code. It is anticipated that the Code will marry-up aspects of the Trust Service Providers Code and both the Corporate Service Providers and Company Directors Codes, bringing them together and reflecting the very nature of a foundation as a hybrid vehicle.

Our second objective was to ensure that the sector has access to appropriate training on foundations. In this regard I am very pleased to be able to announce that the Commission will be holding a ½ day conference at St James, indeed in this very hall, on Friday 11 January 2013 as part of its engagement with industry. The conference will have as its key-note speaker Professor John Goldsworth who is one of the worlds acknowledged experts on foundations and their application around the world. I am also pleased that Advocate Hilary Pullum who drafted the Guernsey legislation will also be here to talk from a Guernsey perspective about the legislation as well as Richard Walker, known to you all, to give an overview of the specialities of AML and CFT with regard to Foundations. Finally there will also be speakers to talk about the Foundation Services Providers Code, consultation for which should have ended by that time.

In addition, the Commission has been working with STEP who I must thank and in particular Paul Hodgson and those who have assisted him. STEP has put together a number of courses to run later in January on Guernsey Foundations. The various courses are not only aimed at Fiduciary Practitioners and Compliance Officers but also at those in related sectors such as Banking and Investment and I would encourage you to spread the word to colleagues in other sectors. It is anticipated that the courses will be run during the third and/or fourth weeks of January.

The next key objective was to review the applications process, especially those for exemptions. I will talk about exemptions now and review the position on applications when

I talk to you later on about the impact of internal changes within the Commission with regards to both AML and what we now call the Authorisations Unit.

Turning back to exemptions, my Deputy Fiona Crocker has been involved with a Working Group to look at certain commonly recurring applications for exemptions. These are principally within the funds sector, where we receive a number of applications for exemptions in respect of limited partnerships.

Whilst there is a general exemption within Section 3 of the Fiduciaries Law for acting as a limited partner of a limited partnership, there is no such exemption to be the general partner of a limited partnership; and in the circumstances where general partnership work is being undertaken, or indeed administered by non-fiduciaries i.e. generally those holding a POI Licence, then a discretionary exemption is necessary. The Division is working hard to formalise and introduce a fast-track method for this, and I hope we will be able to undertake this by quarter one of next year.

The target to monitor and respond as necessary to developments in the legislative framework for QROPS was very much overtaken by events. By quarter four of 2011 it was becoming apparent to us that issues were likely to be arising with QROPS; they were a fast growing, high volume business with attendant risk. Indeed we had begun to have initial discussions around the need for Rules, similar to the RATS Rules.

As it happens the publication in early December of proposed amendments to the UK Finance Bill very much altered the playing field. As you will appreciate, this was a matter with which Government was closely engaged and as the early months of 2012 unfolded it also became equally clear that whatever proactive steps might be taken by the Government in Guernsey these would be equally met and side-stepped by Governments elsewhere.

Last year I trailed my wish to move towards smarter supervision. As I opened my speech today I alluded to statistics and the annual return. These are at the heart of targeting supervision. Fiona Crocker will shortly share with you the output of the statistical analysis of this year's annual return.

Those of you who have heard me speak during the year will know that I consider it important for the Commission to work with industry, and I hope you will see the work on statistics as a demonstration of that assertion as well as being informative and useful. I will say no more now and leave it for you to consider following Fiona's presentation.

The final objective concerned engagement with the broader fiduciary sector. As I said a moment ago the Commission must work with industry.

I firmly believe that it is important for the Regulator to understand the current challenges of the industry and be looking the same way to identify the issues which they create so that they can be dealt with in a constructive manner and thereby I hope smooth the process of growth.

By the second half of next year, the Division hopes to be undertaking a number of face-to-face meetings with licensees. The purpose of these is to meet with the board of a licensee for somewhere around an hour, so as to better understand their business, the challenges, the market, and their future direction. In this way I hope to ensure that the Commission can work in "real time" with licensees; understanding the issues that you face.

In addition, both my Deputy and I have taken a particular interest in attending key industry events, such as the Trans Trust Conference and others with the specific purpose of identifying new issues and trends.

Our engagement is actually broader than this. As you would expect we routinely deal with other regulators. You may not be aware that a group exists wonderfully known as the Quatre Isles Group which brings together the fiduciary regulators of Guernsey, Jersey, the Isle of Man and Gibraltar as an aside whilst Gibraltar is definitely a rock it's not really an island so any suggestion for a new name are gratefully received.

The Group had not met for over 2 years but it came together in September of this year at the instigation of Guernsey its terms of reference include:-

To consider matters relevant to supervision including developments in legislation, regulatory strategy and policy within their jurisdictions, as well as developments in international standards and initiatives.

The Group intends to meet again in Quarter 2 of 2013.

Further afield we are seeing a growth of international trust businesses operating across many jurisdictions, though not necessarily regulated in every jurisdiction. In the banking or insurance sectors there are of course colleges of supervisors.

What is the impact of this emergence of groups? For one, unlike the banking or insurance sector we could see an "offshore regulator" as the lead regulator if colleges develop. A broader issue however is the fact that the fiduciary sector, in the broadest meaning of that term, does not speak with one voice. That's understandable as despite this growth of international groups, each jurisdiction remains in competition with each other.

The lack of one voice, however, does make it easier for there to be criticism of the sector. Indeed I've heard it said that there is shrillness between what the offshore professionals are saying and their detractors, each making disparaging remarks about each other's disparaging remarks. Though I've also heard a debate where both sides, when brought together, can actually acknowledge that within the centre there is some good and well understood work being undertaken.

As you may be aware, Hong Kong is now looking towards some limited regulation for fiduciaries. In the summer the Swiss Association of Trust Companies launched a white paper to press for regulation within Switzerland citing the lack of supervision as having proved to be a disadvantage in terms of international competitiveness. The trusts industry within the United Kingdom is itself considered by many others around the world to be an offshore jurisdiction, and have even begun to whisper of the need to have greater regulation than the limited HMRC Regulation that they currently have.

An international standard would bring an assessable, and measurable standard, and with that further credibility, and it is perhaps best if set rather than, say, "being imposed."

Some of you may be aware of a document – The Statement of Best Practice for Trust and Company Service Providers – that was first produced some ten years or so ago by the then Offshore Group of Banking Supervisors under the Chairmanship of Colin Powell from Jersey. This Group brought together the regulators from principally Island financial regulators representatives from amongst other countries France and Italy, as well as other international bodies the OECD, IMF and FATF, the latter recognise the statement as important.

The Group has been renamed as the Group of International Finance Centre Supervisors (“GIFCS”) and its reputation and influence has grown during the decade such that it now has observer status with a number of international bodies and participates in, amongst other things, the Basel Meetings of Banking Regulators.

In September I attended the GIFCS meeting which took place in Istanbul as this was the venue for this year’s Basel conference. It has been decided that GIFCS should look again at the Statement of Best Practice for Trust and Company Providers with a view to updating it. A Working Party has now been established which I am chairing. I would welcome any feedback on the current Statement which has been posted on the Commission website.

I think that the GIFCS work-stream is important for the fiduciary sector. The absence of an international standard leaves the sector vulnerable, little understood save for some myths, and open to criticism and worse.

Turning to other matters I do not propose this afternoon to dwell on issues of AML and CFT and the amendments to the Handbook. Richard Walker spoke about those this morning in his presentation, but I really do hope that you welcome the changes, especially those surrounding the alternations to the “likely to benefit” rules and the amendment to the list of Appendix C countries.

I will now return to the matter of applications. It was part of our objectives of 2012 to review this and I would like to explain in the wider context and where the Commission has now reached.

I hope by now you will be aware that the Commission has centralised 2 important work-streams. It has created an AML Division, which became operational a week ago today, and an Authorisations Unit.

The first thing to make clear is the creation of the Authorisations Unit does not mean any changes to the regulatory laws, the PQ or PD Forms, or indeed Guidance Notes. Decision-making remains, as before, with the Regulatory Divisions. What has changed is that all the PQs and PDs are now being processed centrally by the Authorisations Unit, with a single point of contact. There is now a dedicated email address. [authorisations@gfsc.gg]

The benefits that the Authorisations Unit brings are a common and consistent approach to PQs and PDs, and the central point of contact for licensees. This means that there will not be multiple approaches when queries arise. PQs and PDs will be processed without regard to other resources of the Regulatory Divisions which had to be balanced in the past. Finally there will be a common approach to due diligence. For the future, the Authorisations Unit will build on its capabilities to increase the types of applications it can process. Areas of centralisation include centralising due diligence on corporate entities, changes of owner, controller or shareholder; and also the centralisation of the application and surrender processes where this is appropriate.

As I said a moment ago, the new AML Division became operational a week ago today. This was part of the Commission’s transformation programme and it produces a number of benefits for licensees which we hope will be realised over the coming months. It will ensure the application of a Commission-wide risk-based approach to AML and financial crime surveillance.

The AML Division will become the established centre of expertise for AML and CFT which will enable Commission-wide standards to be set and, we hope, increased efficiency and optimisation for on-site visits.

There will be co-ordination of Regulatory Divisions AML on-site visits so that they occur concurrently to minimise the level of inconvenience to financial services business, non-regulated financial services businesses and prescribed businesses, and an efficient, effective and consistent approach across all areas of AML and CFT by standardising processes.

Members of the Fiduciary Division will accompany the AML Division on many on-site visits, but not all, to look at the purely fiduciary issues. We will also be looking independently to undertake targeted visits again on purely fiduciary issues.

The visit process should not see a significant change to the methodology by which visits are currently conducted, but one key difference in the process is the introduction of an AML/CFT Questionnaire. The Questionnaire will be sent to Licensees prior to a visit for completion and return, together with any supporting documentary evidence.

Those businesses being visited will have period of 4 weeks in which to complete and return the Questionnaire together with supporting documentary evidence to demonstrate compliance with the Regulations, the Handbook, and the Instructions. Timely completion of the Questionnaire is important to ensure that the visit progresses smoothly.

Finally, to assist the AML Division in being able to complete responses to the AML/CFT enquiries, we have established a dedicated email address to which all queries and questions should be sent for consideration by the Division. [amlcft@gfsc.gg.]

I would like to thank you all for attending. Copies of today's presentation will be available on the Commission website from Monday 26 November onwards. And now I pass you over to Fiona Crocker to talk to you about what the Annual Return tells us all.