

Industry Seminar – 17 November 2015

Productivity and Prosperity

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The development of the Guernsey economy has meant that it has always had, like most islands, one dominant sector. Over the years, that has varied from quarrying to horticulture, to today, it is financial services. But this is as much of the macro-economic theory as you're going to hear from me because I don't want to trespass on that which you've already heard from the Director-General and Philip Marr; after all, I stand here as the Commission's General Counsel, which is an all-encompassing role. In addition to the provision of legal advice I also have a role in the review and analysis of international developments which span the different divisions within the Commission.

Over the next day or so you will hear from each of the divisions at the Commission about changes within their specific areas of responsibility, and so this afternoon I intend to give you an overview of some of the changes in the global regulatory picture. And it's fair to say that this year there are some mixed messages.

Before I proceed, a word about the revision of laws project, which is currently underway. We are at about the halfway point. The States have now voted on the proposals and we are entering into the technical phase of drafting the laws ready to be brought back to the States of Deliberation around this time next year. We will then be looking to bring the revised laws into force following Royal Assent in the Privy Council.

I would like to take this opportunity to thank all those who have worked on this project, in particular Tania Shires but also those of you in the industry whether you have contributed through involvement with GIBA or as unsung members of industry or technical committees.

Slide: Revision of Laws

So, just to recap on the aims of the project, they remain;

- First, to create efficiencies for both the industry and the Commission;
- Secondly, to future-proof the legislative regime, so far as that of course is actually possible;
- Thirdly, naturally, to meet international standards; and
- Finally, to meet the introduction of MiFID (more of this later).

The revision of the regulatory laws will, I hope, help with productivity, and here I briefly turn to micro-economics. By now, you will have heard me speak of inefficiencies created by the inconsistent provisions in the regulatory laws and the disjointed processes these create. The Provisions are not there deliberately, they're not there because of anyone's fault. The Laws were

drafted over a number of years and as more effective approaches to regulation were developed, so subsequent Laws included them, whilst the earlier laws were often not amended.

I hope the proposed laws once drafted will create efficiencies and thus allow for increased productivity. This is important for both Industry and the Commission. The Commission recognises that regulation is a fixed cost, and in turn I believe that Industry recognises that regulation is an integral part of its business operations. In this respect, 2008 and the credit crunch crisis instilled that shift in the paradigm. At the Commission we hope that by creating streamlined and joined-up processes, as well of course as the other things which we are doing with regard to online services, of which you will hear mention tomorrow, we are getting the Bailiwick into a place where it can deliver effective regulation that is efficient for the industry, and also for the Commission. So in economic terms, keeping down both our costs reduces the opportunity cost of doing business.

The international landscape is very varied at present. Many new challenges present themselves and, as we all know, within those there can be both threats and opportunities – the latter of which translate into prosperity.

As part of the revision of laws, the Commission specifically queried with industry the extent to which we should be looking to legislate in more narrowly focused ways. The resounding response from both the discussion paper and later the consultation paper was that Guernsey's strength is in having broadly drawn, flexible legislation. This is the direction we have taken, and have chosen to maintain a broader and flexible approach and in this way contribute towards increasing prosperity. In certain areas, and in response to feedback during the revision of laws project, we have worked with industry organisations to help develop appropriate guidance such as with regard to index-linked securities in the insurance field, which has now been placed on the website with links to it.

Our approach to keeping the legislation broad will, I hope, also help us meet the aim so far as it is possible of the project which is to future-proof our legislation.

Slide: Global regulatory picture: mixed messages in 2015?

So, to turn now to the international landscape. What does it look like? As I said in my introduction there are some mixed messages out there.

The shift in the paradigm that was 2008 is reflected in the continuing regulatory changes which are coming forward, whether that be changes to Basel III in the banking sector, or to international capital standards in the insurance space. Separately the European Union is introducing MiFID2, the Markets in Financial Instruments Directive, and its cousin for professional investors MiFIR. In other areas there is now EMIR, the European Market Infrastructure Regulation, and all of these follow on from the changes in previous years in respect of AIFMD. I should just linger here for a moment on changes we have seen to the architecture of the European Commission itself. Financial Services used to be within the responsibility of something called DG Markt, the Directorate General with responsibility for the Single Market. With the advent of this new Commission financial services have now been hived off to become a standalone Directorate-General for financial services, financial stability and financial markets, which somehow becomes the acronym DG Fisma, and it is headed by the UK's appointed Commissioner Lord Hill.

In summing up the changes to the international landscape continue apace and I will just remind you of what I have said on this subject in the past which is that we, like you, feel the pain that

further and amended global regulation brings and endeavour to implement it in such a way as to introduce to Guernsey those aspects which it needs for its established sectors and reflects what I said a moment ago about designing a legislative framework that allows for flexibility.

It would be easy for me to sit down at this point having said that this is just how it is and everyone needs to comply. The reality as I said at the beginning is that, this year we are seeing a certain amount of kick-back.

Firstly, in the United States, arguments have been made by no less than Alan Greenspan and others to water down the Dodd-Frank Act. For those of you unfamiliar with its terms it is titled the Wall Street Reform and Consumers Protection Act. It was introduced in 2010 in the wake of the Crisis, and is the US equivalent of VICKERS, Banking Resolution and Recovery Directive and MIFID and much more. To borrow a term from our Allies it very much goes the whole nine yards, in its response to 2008.

With the appointment of Lord Hill we have begun to see a more structural look at capital markets within the European Union. At present there is ongoing consultation on developing the Capital Markets union. This work I believe is positive and at the Commission we are actively considering the consequences.

We are seeing other changes in what is being referred to in London as the new settlement with the City. This is a collection of proposals from both the Chancellor of the Exchequer George Osborne, and Mark Carney the Governor of the Bank of England, which reflect a change in approach with the aim, amongst other things, of increasing productivity. There are a number of consultations which have come forward; one in particular is the Fair and Effective Markets Review which essentially challenges the European Union attitude to regulation. With this offering the UK is perhaps making a statement about alternative approaches and the underlying strength of the City of London. We also continue to see a move further East in UK relationships whether this be the rekindled Chinese relations or more broadly UK support for the new Asian Infrastructure Investment Bank, an eastern cousin or competitor if that is the correct term, for the World Bank. I think that over the next few years it will be very interesting to watch and see whether the European Union's view of the world order and how business should be conducted is maintained or whether more liberalised policies succeed.

Slide: Global regulation's impact on productivity & prosperity

As we all recognise, global regulation has an impact on both productivity and prosperity. It often determines the basis for market access. I have put up some of the measures affecting in particular the Banking and Investment sectors – for UK banks there is VICKERS and within the Eurozone Liikanen, and in the Investment space, the now familiar string of abbreviations.

Regulation becomes a key component in determining competitiveness, subtle changes made to regulation can support innovation and growth.

The developments of new technologies and means of communication has allowed for new entrants to the market to disrupt and challenge established sectors.

By now many of you will be familiar with the term disintermediation principally the result of new online systems or services. We are seeing its effects, they appear for example in peer-to-peer lending platforms or through lower cost money value transfer systems as challengers to

established BACS payments through banks perhaps even in its own way the Commission's own online portal is beginning to disintermediate in the provision of support services to licensees.

It is still early days with many of these new technologies and in some respects they have not developed much beyond the use of new social media for promotion activities, and perhaps for just a moment I'll pause there just to mention there is a link on our website to guidance issued by the Financial Services Authority on the appropriate use of social media in the promotion of financial services and products.

The Commission is looking to support the FinTech sector and I am sure that this something you will hear more of from Gillian Browning when she speaks about the further opportunities for innovation in the financial services, with which the Commission is actively engaging.

So, as I have said, there are definite challenges developing.

Slide: International: Guernsey response

Finally I would like to turn to Guernsey's response to this year's international developments. Firstly, on market access, the banking division is working on evaluating responses to its recent consultation on Basel III Capital Standards.

In support of work firstly with regard to AIFMD, and more generally being mindful of the needs for reciprocity to obtain market access, the Policy Council recently enacted the Investor Protection (AIFMD) Regulations, the full title of which are on the slide. The effect of these is to grant regulated professionals in EU Member States who have enacted AIFMD themselves reciprocal access to our professional investors.

As you are aware, the Commission is working on the AML Handbook as, whilst we await the outcome of the Moneyval inspection, we need to ensure that our adherence to international standards for anti-money laundering and now more than ever, countering the financing of terrorism are ever vigilant in ensuring that the good reputation of Guernsey is maintained as without it market access would be easily lost.

To further ensure market access, the Commission has been actively entering into Memorandums of Understanding with other regulators and have signed up seven this year from jurisdictions as diverse as Ireland, Portugal and South Africa.

In cementing Guernsey's reputation as an international finance centre the Commission has been engaging itself, or where appropriate in conjunction with Government, on responding to consultations on a far reaching number of topics.

On the question of competitiveness, much work has been done on AIFMD in taking steps towards passporting and ensuring that Guernsey is amongst that group of first movers able to take advantage of recognition. It has done this by being at the forefront as a well-regulated jurisdiction.

Last year I spoke about the Group of International Finance Centre Supervisors Standard for the regulation of Trust and Corporate Service Providers. Throughout this year, work has continued to not just progress the implementation of the Standard, but to promote its broader international recognition. It is important that jurisdictions such as those in the Bailiwick who are leaders in the regulation of fiduciaries are acknowledged as such, not just for the standard of anti-money

laundering and countering of the financing of terrorism compliance, but also for their corporate governance and all that comes with this.

By promoting the Standard we can say that the Bailiwick meets international standards for the regulation of fiduciaries. This establishes a further credible point of difference from those larger jurisdictions who, whilst they might complain about the amorphous term “offshore”, do not crucially themselves regulate their own fiduciaries.

Slide: Revision of Laws

So, finally, I return to a slide I put up at the beginning of my talk. With hindsight, I should have put up the e-mail address we put up for the project -revisionoflaws@gfsc.gg. It wasn't that imaginative an address, and perhaps if you look at the title of this slide and run it together in your mind, you will see that the address, if read quickly, merged into revision of flaws. Ironically, as a short title, that is sort of what the project was all about.

I want to emphasise how I see the project affects productivity and prosperity. I believe that having a legal framework that creates efficiency for both industry and the Commission, is future-proofed so far as is possible and which meets international standards will give us a platform on which to build a strong economy.