



Guernsey Financial
Services Commission

Industry Seminar – 20 October 2011

Fiduciary Services Division Presentation

Philip Nicol-Gent – Director, Fiduciary Services Division

I would like to begin by welcoming you all to the Fiduciary Services Division presentation.

It is a particular pleasure as it's my first opportunity to meet with many of you and I thought I would begin by giving you perhaps a very short CV.

I am I'm afraid a lawyer by training. I was called to the English Bar some 20 years ago and completed my training, pupillage as it is known, at 24 Old Buildings, Lincoln's Inn – a specialist chancery and offshore set of Chambers –thereafter I was in private practice at the English Bar until moving to Guernsey in 2000.

I was called to the Guernsey Bar in 2003. Contrary to popular myth, I have never been a prosecutor. Throughout my career I was a civil litigator. I have acted for the Financial Services Commission in a number of matters including acting throughout the Landsbanki proceedings, and also on many Trust, Limited Partnership and Tax Matters.

I have first-hand experience of the factors which affect the fiduciary sector, to this add my 9 years in the private sector and I hope you will see I understand your side of the line as well.

I think it's fair to say that the last 12 months have been tough. It's been tough for the fiduciary sector with the continuing challenges that very low interest rates present. It's also been a tough year within the Fiduciary Services Division.

It will not have gone unnoticed that there has been significant change. I must thank Neville Johnson for his time as acting Director. I am pleased to report, however, that that process of change is now complete. My Deputy in post since April will be known to most of you – Fiona Crocker who was formerly an Assistant Director. Within the Division there are 2 new Assistant Directors – David McCloskey who has joined us from the Investment Business Division, and Paul Evans who has joined us formerly having been an accountant with Credit Suisse. There are 3 new analysts within the Division.

The Division has seen the integration of the Registered Businesses Team with Rosemary Stevens as Assistant Director and Rosanna Hendry as Senior Analyst who between them have responsibility for a little understood part of the Regulated Environment. Registered Businesses encompasses the non-regulated financial services businesses such as the Bullion dealers and Loan companies, and the professionals, not that is Bodie and Doyle for those of you old enough to remember them, but the lawyers, accountants and estate agents.

Before I go any further I would like to take a moment to thank Stephen Trevor, who was the Director of the Division for a long time and had been with it since its inception. In 2001 the idea of regulating the fiduciary sector was very new, as Stephen used to like to point out there are many larger jurisdictions where it still doesn't occur.

The period from 2001 to last year therefore very much cut new ground. I think if one was being honest, legislation came in for a reason in part perhaps to sort out the somewhat mixed bag. Stephen and his team set about sorting it out and perhaps in places even dragooning the sector. The trust sector is as a result a much stronger place now with a solid reputation. The work was necessary then and remains now, and I am grateful to Stephen for inheriting a very good team.

So where are we today?

- Numbers of licensees – current 145 full fiduciaries and 38 personal fiduciaries
- Numbers of licences issued
- Numbers of surrenders

The sector has reached a maturity and with Stephen's departure and my arrival now is a moment I think for a step change. Maturity cuts both ways - that we should progress towards smarter supervision against a more risk-assessed basis, and in return we would hope that you would be complying as required without the need for prompting. 10% of the assets under trusteeship questionnaires were still outstanding at close and a number of you seem to put information in your accounts for your auditor such as litigation and changes of directors that frankly you should have told us months before.

This next brings me neatly on to the issue of assets under trusteeship.

It has been a number of years since research in this area has been undertaken. The current research has been prompted by the move to smarter supervision of which I have spoken, we cannot do that without a proper base of statistical information. It is true there was also a recommendation from the IMF that we should know the composition of the sector. We recognised that in the first year a request for statistics as part of the Annual Returns would be onerous, but from next year we will be looking to include it within the Annual Return.

There is one interesting anomaly we have spotted in beginning to look at the returns – we seem to have 14 licensees that have no assets under trusteeship. I am sure that, in some cases this is correct because the licensees are merely corporate service providers dealing with the formation of companies. However, I don't believe as many truly have no assets and if I was being mischievous I could say it begs the question, if you have no assets under trusteeship do you need to retain your fiduciary licence, but I'm sure that's just a blip and it will sort themselves out in the next year or so.

We normally aim to undertake 40 on-sites per year, and notwithstanding the changes that have occurred we have undertaken 37.

There is of course an important emphasis on AML and this will remain, but I wish to give greater consideration over the coming year to the way in which we undertake our management visits.

So what does the future hold? First, foundations are just around the corner. I don't want to pre-empt what David McCloskey is going to talk to you about, but one interesting statistic that he does have is that 89% of the industry has not had any exposure to the operation of foundation structures.

Consideration needs to be given to how foundations will come within the Guernsey regulatory regime. The draft law requires there to be a licensed fiduciary as a council member of a foundation.

These are new vehicles, they are neither trusts nor are they companies, although they draw a little on the principles from each. Training on foundations is important.

David will talk more about foundations, but a useful analogy is that you would not want to go to your GP to be told he was now able to practise as a dentist without any additional training.

Yes, there is an overlap in knowledge – anatomy, prescribing of drugs, medical ethics, etc but the actual doing is different and that is why I consider that some form of training for foundations is necessary. I'm not looking to make it prescriptive but will keep that under review.

QROPS are also growing business. Figures published by the International Advisor in December 2010 said that £1.3 billion worth of UK pension funds had been transferred out of the UK since 6 April 2006, but that the estimated total market was some £575 billion. You will no doubt be aware of the interest of HMRC in Singapore and its growing interest in other jurisdictions in the Mediterranean.

With a growth of that size, attendant risk attaches and with that comes reputational risk.

I have invited Donal Kennedy, the Head of IT at the Commission, to talk to you today about data security. From reports made to us we are aware of attempts being made to intercept client payment details, etc. Data security is no longer a fanciful issue and as the bigger companies improve security so those with malicious or criminal intent will move towards medium and smaller companies.

In these difficult times Guernsey and the other offshore jurisdictions will very much remain in the international spotlight. Whilst Guernsey can and should take credit for the glowing report from the IMF, we cannot allow ourselves to sit back.