



Guernsey Financial  
Services Commission

## **Industry Seminar – 20 October 2011**

### **“The Move East and Reputation” Presentation**

#### **Philip Nicol-Gent – Director, Fiduciary Services Division**

I would like to thank Donal Kennedy for presenting to you this afternoon and hope it has given you food for thought, I shall return to data security later.

The bedrock of the fiduciary sector is its reputation. If you take any well known brand, whether it be Apple, John Lewis, or Heinz – at its foundation is its reputation. It is hard won yet, equally it is easily lost.

For the fiduciary sector in Guernsey there are different spheres of reputation which can be upset.

The perhaps external sphere relates to Guernsey’s international standing amongst governments and international bodies. In this sphere very careful consideration is given to our AML and indeed CFT compliance. Tax, of course, figures much in external perceptions.

The move East engages not insignificant reputational issues and I really would like to stress that. In so doing, it’s not my job to stand here and say “You mustn’t do it” and I don’t. Indeed GuernseyFinance are out there actively promoting in Russia and China. What we must have, however, is partnership between the fiduciary sector and the regulator in this area so that we understand each other and the risks attendant with the move East.

I’m going to just touch on some of the factors and it’s not going to be an exclusive list, and of course many of you already have clients and structures that are high risk. The fact is, however, that business from the East is essentially business from restricted communities and closed economies.

Those countries are still in many cases maturing. Democracy is fledgling to some and non-existent to others. The same could be said of human rights and judicial systems. Indeed often one of the drivers for placing assets outside of those jurisdictions is the ability to have recourse to enforceable rights through established impartial courts. As wealth is new to many there is perhaps a greater desire to protect it, but it is so important to ensure that you fully understand the legal requirements of the jurisdictions in which you are entering and indeed the politics where your clients are PEPs. As any economy opens up there will be those with an eye to a quick buck and it will be being made by fair means or foul.

You need to be very mindful around a number of issues. Bribery – we have heard much of the UK Bribery Act but do not overlook the Guernsey legislation – The Prevention of Corruption (Bailiwick of Guernsey) Law, 2003 and also remember that Guernsey has acceded to the United Nations Convention against Corruption. With your business risk

assessments undertake appropriate risk assessments in respect of new structures, being particularly careful to consider properly the source of funds. It is also important to ensure that you really do have true and proper CDD.

In appropriate and high risk circumstances, you may need to look beyond just simply accepting documents at face value and I would recommend speaking with the professionals you are dealing with in that country. I suspect you will find these professionals are particularly keen to ensure that they know who and what they are dealing with because, being within the jurisdiction they are more susceptible and easier to the reach of those authorities. I understand that many of the large accountancy practices in the former Warsaw Pact actually employ their own Private Investigators to check up on their own clients, to make sure that the information they are receiving is bona fide. In this area and generally can I also remind you of the GAT guidance on “Likely to Benefit” rules in respect of beneficiaries. The rules should already be in routine use, they appear on the GAT website and may take on a even greater importance when dealing with different cultures.

What other reputational issues arise? It is particularly important that tax avoidance in these developing economies does not get confused with tax evasion through ignorance. The move East potentially invites a greater risk and it will stretch the way in which we are viewed by Western governments if it is found to be occurring on a regular basis. In particular in the current financial crisis where tax leakage from any jurisdiction is being targeted.

There are other issues. You will have been to the master classes that GuernseyFinance run on how to do business, the etiquette of business – I am not here to talk to you about those. What I do wish to raise, however, is to remind you to be sure that you understand the culture in which you are operating. Different cultures treat wealth and particularly family wealth in different ways. For example, as I understand it, it is quite usual within Chinese families for capital to flow up and down the generations depending on when and where it is needed most. Where Guernsey could suffer is if the products that are marketed don't do what the purchaser truly wants them to be able to do or do so with significant penalties. I would really urge you to be sure that you understand your clients' needs. This will in some respects develop quite a high burden because it is going to be very important, and a matter we may have to give some consideration to. Please ensure that you have appropriate translating facilities and services available to you so that you as the trustees do truly retain control over the assets.

There is also an internal sphere this relates to individuals - to what extent do they trust that their affairs will be properly administered and protected. It wouldn't take more than one or two targeted breaches of IT systems identifying well known celebrities who manage their affairs through Guernsey to damage that reputation. So concerned is the UK with the international risk of cyber attack that responsibility to guard against it now rests with the Ministry of Defence.

A recent article in the FT emphasised the mis-match that exists in many even large companies between the understanding of the Head of IT and that of the Board. That said I was very interested to learn only very recently that one large financial institution has for the first time recently appointed a new role, that of Chief Technology Officer.

Finally, foundations – I thank David for his presentation to you this afternoon. I think it was very informative and I hope that we can work together in ensuring that the introduction of foundations is a smooth process.

Thank you

We will now take some questions.