Guernsey Financial Services Commission

Industry Seminar – 20 November 2014

International Developments

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Good afternoon. For those of you who don't know me, I am Philip Nicol-Gent, the Commission's General Counsel. What does that role entail? Well, alongside many GCs around the world, the role of General Counsel today, in addition to providing legal advice for which I am supported by a small and professional team at the Commission, it requires an understanding of the wider international developments of regulation and legislation. As the General Counsel of the Commission, that role translates into having an overview of policy and regulatory developments from the various international standard setters, as well as the European Union and closer to home the United Kingdom, and, whilst the individual supervisory directors have responsibility for liaising with their respective international bodies, my role is to deal with the overlaps and ensure that so far as is possible, the Commission and, in turn the Bailiwick, are well-placed to respond to these.

This afternoon I am going to speak therefore about some of the international aspects of my role, as opposed principally to the legal, although the two cannot be easily divorced. Before I do I want to mention the revision of laws project, about which I hope you are now all aware, there are four key aims. The first of these is to create efficiencies for both industry and the Commission, by enhancing the clarity of the legislation and removing inconsistencies which exist as between the various sector laws. Whilst each law has generally been effective in enabling supervision of the activities it covers. The differences within and between each of the laws in relation to supervisory practices and procedures have resulted in confusion and inconsistencies, and these have increased over the years as either new laws have been enacted or existing laws amended, this is inevitable over time and is neither the fault of the draftsman nor the Commission. By clearing up these, I hope it will make dealing with the Commission more effective, and I hope also therefore more efficient for both industry and the Commission.

The second aim is, so far as is possible, to future-proof the Bailiwick's regulatory and supervisory regime. The pace of change in the global finance industry is such that the Bailiwick needs to be able to respond quickly and appropriately to developments and work with the Bailiwick's financial services industry as it seeks to extend the range of services on offer and the markets in which it operates. Those of you who have heard me speak before about the revision of laws project may also have heard me speak about what I describe as the "because of's". By this, I mean those comments which clients or introducers have made to you to the effect that they would have loved to have brought business to the Bailiwick, but they couldn't "because of". Now, I can't stand here on this stage and promise you that when you come to me with a "because of" I can just change it. It may be there for a very good regulatory reason. Equally, it may be there because no-one has ever spotted it, or it has never been a problem before. If there is good reason and the case can be made, then the Commission will entertain looking at making appropriate changes. As part of the revision of laws process, one of the key audiences that the Commission has been wanting to engage with in this context is

importantly the business development managers – those who are out there encountering the "because of's". Can I make a plea here for you to pass that message back please.

At this point I think it is also worth talking about how the Bailiwick has legislated to date. It is a key strength of the Bailiwick's position in the financial sector that it has flexible regulatory laws. In the initial stages of developing both the revision of laws project and the discussion paper that was launched last week, the Commission engaged in open conversations with a wide number of stakeholders from the financial sector and, indeed, they emphasised to us time and time again the perceived flexibility of the Bailiwick's regime. A number of people suggested that a key strength of the legislative framework is its flexibility, which allows service providers to be nimble, and that we should tinker with it carefully and, indeed, at our peril. Equally, however, others have suggested that some of those now seeking to bring business to the Bailiwick can be put off if there is not a clearly labelled law or set of regulations that specifically cover their activity. They suggest that those considering doing business with the Bailiwick in this ever greater world of regulation prefer to see a pigeon-hole into which they can place the product or service so as, to be able to satisfy those within their own jurisdictions whether a lender, investor, their own compliance department or a fellow regulator that it is appropriately regulated, and would rather see this than rely on an advocate's legal opinion, which both costs and will rarely give you a copper bottomed guarantee.

There are naturally two sides to this debate but I want to say here that the Commission is well aware of the great strength that the existing framework provides to the Bailiwick, and the Commission will consider very carefully how and the extent to which it is possible to develop and future-proof the regime in such a way that does not lead to more and greater regulation.

Having dealt with the first two aims, I will now move on to the third, which is to try and ensure compliance with international standards. As you know, the IMF last visited the Bailiwick in 2010 and its next visit, we understand, is unlikely to be before 2017. Now, standing here in 2014, that seems quite a way off, but I can assure you that in legislative terms, that is tomorrow. Of course, international standards change all the time and every jurisdiction will always have drying ink somewhere in its legal library. However, the laws do need to be updated to deal with the changes that have occurred with Basel, IOSCO, and, something which I will return to later in my speech, the new Standard for the regulation of trust and corporate service providers. The insurance changes which were more urgent we have fortunately been able to be deal with using a smoother legislative procedure and are actually already being enacted.

Finally, in terms of aims, the Commission and industry need to prepare for MiFID II. What is MiFID II? Well, fortunately I am going to leave that to the Investment Supervisory and Policy Division to deal with in their presentation tomorrow but, standing here as a word of caution – think Beer, it reaches parts other regulations cannot reach but is less palatable than Heineken MiFID reaches beyond the investment sector. Which parts? Well, I am afraid as yet none of us can say with any degree of certainty, as the European Commission is still finalising some of the more technical rules where often we know the devil in these things lies. What does MiFID present? Well, along with all changes in regulation, there will be both threats and indeed opportunities, and the financial services sector needs to grapple with both of these. A word to the wise; having recently attended the town hall put on by the Investment Supervision and Policy Division, if you do business with the UK, you are perhaps despite today's Rochester by-election still doing business with the EU – a point not fully appreciated perhaps, but

nevertheless highly relevant to you all. MiFID II is a very fluid situation at the moment and we may issue a further short discussion paper as we know and understand more.

So, having dealt with the four aims of the revision of laws project, what else do we need to do? Well, actually, and this is a very key thing, we need to decide very carefully and firmly, what not to do.

As I have said 2017 is tomorrow in legislative terms. Some suggestions will have to be parked, though not forgotten and some will be more a matter for Commerce and Employment, perhaps in terms of alterations to the Companies or Partnership Law and will be passed across to them, as we are keen to work in partnership with both government and industry on this. Separately, you will be aware that Gillian Browning, the new Director of Fiduciary, whose role includes innovations and the FinTech space, is already working alongside Commerce and Employment on a parallel process for developing legislation that is fit for the twenty-first century. This workstream will include reviewing the terms and scope of the Non-regulated Financial Services Businesses Law of 2008.

To re-emphasise, the Commission has currently on its website the discussion paper, the period for which ends on 19th December 2014. As I have said, the timetable is tight, and I would be grateful for comments and feedback ahead of that date, indeed we are very happy to take feedback in chunks rather than storing it all up for the end. There is a dedicated e-mail address as well for feedback which can be found in the discussion paper. Once we have reviewed the feedback, the next stage will be to move to a formal consultation paper in February 2015, with the intention of a States report being debated in the Autumn of 2015 so that the drafting process can begin with sufficient time to be completed ahead of 2017.

As I have said, one of the drivers of the revision of laws is meeting international standards and I would also like to take this opportunity this afternoon to tell you about the newest of those international standards, on the Regulation of Trust and Corporate Service Providers, which has been set out by the Group of International Finance Centre Supervisors and of which I was the Chairman of the working party. For those of you who don't know much about the Group of International Finance Centre Supervisors of the GIFCS, it is a grouping of many of the international finance centres and includes amongst its members Guernsey, Jersey, the Isle of Man, Gibraltar, the Cayman Islands, Bermuda and Macau. In total there are eighteen members. The GIFCS is involved principally in the banking and fiduciary space, and has observer status at both the Basel Committee on Banking Supervision and, equally importantly, the Financial Action Task Force on Combatting Anti Money Laundering and Combatting the Financing of Terrorism. Representatives attend the FATF plenaries three times a year in Paris where they are able to speak on behalf of the international finance centres. It also meets both in its own right and alongside meetings of the International Committee of Banking Supervisors.

It was at Tianjin in China this September that the Standard on Trust and Corporate Service Providers was signed. It is a fact that will be well appreciated in this hall, that little or no regulation of trust and corporate service providers is undertaken in the onshore world. By contrast, however, it is second nature to members of the GIFCS and back in 2011 when I first arrived at the Commission, I was asked by the Commissioners what I thought was a key challenge for the fiduciary sector. My response was that the lack of international standard in the fiduciary space left it vulnerable when compared with say the Banking Sector with the Basel Core Principles or the Investment Sector with IOSCO. This was against the backdrop of

2008 and falling tax revenues around the world. The timeline here is important because it makes clear that the GIFCS took the initiative in 2011 and 2012 somewhat ahead of the 2013 G8 summit at Lough Erne which really began to talk, or was it lecture about beneficial ownership for the first time.

The TCSP Standard addresses a number of issues and whilst I have spoken about it against the backdrop of beneficial ownership, it is important to emphasize that actually it deals with much more than Anti Money Laundering issues.

Part 2 of the Standard lays out the five key overarching principles that apply to Regulators, the regulatory system and jurisdictions as a whole in relation to the regulation and supervision of TCSPs. These five principles speak to an integrated environment where a comprehensive legislative framework, risk based supervisory practices, cooperation arrangements and robust enforcement measures promote a sound regulatory/supervisory system for TSCPs to operate in. In addition to the principles applying to the Regulator, Part 2 of the Standard lists general principles that jurisdictions should implement to create an effective regulatory environment for TCSPs and their Clients. And goes so far as to say that

"Where jurisdictions do not regulate TCSPs, they are actively encouraged to consider introducing legislation and a regulatory framework in accordance with this Standard and promote practices to meet it."

Part 3 of the Standard governs the oversight of the operations of licensed TCSPs by the Regulator. This Part is composed of 10 standards divided into sub-standards on topics that include licensing, fitness and propriety of controllers and key persons, conduct, financial crime and international standards. To touch on one aspect of the standard it also addresses matters such as corporate governance, prudential requirements around capitalisation and liquidity, you might ask why but these are important to a well run TCSP, corporate governance goes without saying but issues such as capitalisation and liquidity goes to the ability to invest in future IT or train and develop staff.

None of this is new. The fact of the matter is that this Bailiwick and indeed GIFCS members have for the most part been subject to fiduciary regulation for the last fifteen years. It is an accepted part now of dealing with international finance centres, and is recognised by the international community, indeed strong contributors to the drafting of the Standard were amongst others at the World Bank. The Bailiwick has a good story to tell in the fiduciary sector, and the work of the GIFCS shows both a leadership from a position of strength, and allows it to make what is now a mature contribution to the debate on both beneficial ownership but also in terms of expressing its credentials as a leading international finance centre. The benefit of the Bailiwick having led in the fiduciary space where others now follow is that in terms of meeting the international standard of the GIFCS, the changes necessary to the fiduciaries' legislation is more in the manner of housekeeping than substantive, and so talk of gold-plating, of which I have heard whisper, is misinformed. From my dealings and meetings with the FATF in Paris, or the US Treasury and the IMF in Washington and others, is that initiatives such as this allow us to be seen as jurisdictions firmly in the first division.

You will hear tomorrow from the different presentations from the supervisory divisions of changes in international standards and the challenges that these present. As you have heard

from the Director General's address today, the number and breadth of international bodies with which we now have to engage has grown. The challenges that presents for both us as the Regulator and you as the industry are acknowledged and I hope through the revision of laws project and other engagements, we can work together in meeting the Commission's mission of ensuring confidence in the Bailiwick.