COLLAS CRILL

Advantages of the Guernsey trust regime

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Guernsey has an excellent reputation as a trust jurisdiction, recognised by the OECD through its inclusion on the first "White List" published in April 2009, by the 2009 Foot report which placed Guernsey highly amongst the international finance centres, and by receipt of various awards including, most recently, International Financial Services Centre Of The Year at The Wealth Adviser Awards 2014.

Approximately 200 licensed fiduciaries are located in Guernsey and the value of assets held in trust in the island is estimated to be in excess of £300 billion. There is a significant level of trust expertise to be found in Guernsey and a well-established infrastructure of professional support including in the legal, accounting, audit, tax and actuarial fields.

The island is committed to tax transparency through the signing of approximately 57 Tax Information Exchange Agreements, and has already entered into such agreements with many countries, including the USA, UK, France, Germany and Australia and Guernsey continues to discuss TIEAS with many other countries. The International Monetary Fund (IMF) visited Guernsey in 2010 and Guernsey received a positive evaluation.

In addition to the above, Guernsey has the significant advantage of having innovative Company and Trust laws, a strong regulatory environment and a recently established Intellectual Property Registry.

The Trusts (Guernsey) Law, 2007 (the "Law") came into force on 17 March 2008 and replaced in its entirety the previous 1989 legislation. The Law has been widely praised and the key provisions are as follows:

Guernsey trusts may be established to last for an unlimited period;

- A non-charitable purpose trust may be created;
- A trust may be created directly over Guernsey real estate;
- A statutory lien will be provided in respect of retired trustees and a director or former director of a trust will not be liable for any past breach;
- A settlor of a Guernsey trust may reserve certain powers, or confer such powers on a nominated third party, without prejudicing the validity of the trust. The powers which may be reserved / conferred in this way include the power to:
  - revoke, amend or vary the terms of the trust
  - advance, appoint or apply income or capital of trust property
  - give binding directions to the trustees in relation to the purchase, retention, sale, or management of trust property

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  - appoint or remove any trustee, enforcer, protector or beneficiary
  - change the proper law of the trust
  - restrict any trustee power by requiring the consent of the settlor or a third party as a precondition to the exercise of such power.

- The law contains a robust "firewall" provision to confirm that all issues regarding the capacity of the settlor, the interpretation of the trust, its administration or variation will be a question of Guernsey trust law alone. This offers significant protection to the trust from hostile claims of creditors, spouses and beneficiaries made outside of Guernsey, as well as protecting the trust from foreign forced heirship rules;
- The terms of the trust may expressly exclude the beneficiary's right to information about the trust;
- Powers of attorney can now be given by trustees for up to three years;
- Letters of Wishes or documents which reveal the intention of the settlor or any beneficiary of the trust may be preserved from disclosure; and
- No action for breach of trust can be brought that is more than 18 years old, regardless of whether the beneficiary had actual knowledge or not.

The combination of the flexible framework provided by the Law and the other factors detailed above, including the favourable tax regimes which exist in the island, combine to make Guernsey an extremely well placed and competitive jurisdiction for the establishment and administration of all types of trust structure.

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