



GUERNSEY'S BOOMING ISLAMIC FINANCE SECTOR – BUCKING THE BREXIT TREND!

SEPTEMBER 2017

As featured in *Offshore Red* publication.

During a period of relative economic uncertainty, projects for Muslim clients in Guernsey have been continuing full steam ahead – bucking the Brexit trend.

Here, Angela Calnan, looks at the key reasons for this and how Guernsey has managed to successfully diversify and weather the Brexit storm.

Overview

For decades now, the Channel Islands have been a key offshore financial centre.

Prior to 2006, a significant proportion of private client work in Guernsey was for UK-centric clients. However, the wide ranging Finance Act of that year led to a shrinkage in that market and the need for a sharp change of focus.

In the words of Charles Darwin...

"It is not the strongest of the species that survives, nor the most intelligent that survives. It is the one that is the most adaptable to change."

In many aspects of life, Guernsey has deliberately resisted change – there is no Starbucks, there is no MacDonalds, there is no Easyjet.

However, in the world of professional services, law and regulation, Guernsey is quite the opposite. The "adapt or die" mentality prevails.

Post-2006, Guernsey's lawyers, accountants, private bankers and trustees started to look to diversify away from structures with tax mitigation as the primary driver and towards structures for clients whose main driver was succession planning and business continuity.

This quest has taken Guernsey's advisers to low tax and no tax jurisdictions such as the Middle East and the Far East to explore new opportunities.

Now, more than a decade on, Guernsey has a booming industry in looking after Muslim families with family businesses. Helping those

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families with succession planning, structuring and Shari'a compliant investments - work which has felt little or none of the Brexit impact.

What are the keys to Guernsey's success?

Population Growth

First, Guernsey identified and targeted a growing market.

The Muslim population growth rate is 1.8% per year as compared to the world population growth rate of 1.1% per year. It is predicted that the Muslim population will grow twice as fast as non-Muslims over the next 20 years and, by 2030, Muslims will make up more than a quarter of the global population.

Islam is also the fastest growing religion all over the world.

The world is changing and it is important that western advisers adapt and broaden their expertise if they are to continue to remain relevant. Guernsey advisers have been ahead of the curve here and this has been a key driver of the jurisdiction's success.

Guernsey's Evolution

Guernsey has managed to attract clients and deals of considerable scale and complexity despite being a relatively small island of only 60,000 people.

The Channel Islands Securities Exchange (CISE) is now home to a number of debt securities and investment vehicles which are Islamic finance structures.

Guernsey's Salam III, Wakalah Programme was the first ever securitisation of takaful - a Sharia compliant insurance policy – a deal which was judged the best deal in Europe at the Islamic Finance News Awards.

The World Shariah Funds PCC, an open-ended protected cell company listed on TISE and distributed globally, is also administered in Guernsey.

On the private wealth side, numerous trust and foundation structures have been established to hold family businesses for Muslim clients with the PTC and PTF still proving ever popular.

Guernsey was one of the first offshore jurisdictions, perhaps even *the* first, to pioneer and register a foundation acting as a private trustee; yet another example of the Darwinian "adapt or die" mentality.

Islamic Law & Private Wealth

Structuring family businesses for Muslim clients has enabled Guernsey to drive two new significant business lines; (i) Islamic finance; and (ii) Islamic succession planning.

Some jurisdictions have shied away from this work on the basis that it is too specialist or too difficult. Guernsey, on the other hand, has rolled its sleeves up and developed its expertise.

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Looking at Islamic finance first...

(i) Islamic Finance

Islamic law (Shari'a) prohibits certain activities such as certain types of lending or charging interest so Guernsey banks have adapted their practices in order to offer specialist products and services which do not contravene these prohibited activities.

This means that the documents needed to perform banking transactions have different names to mainstream banking documents and/or certain bespoke clauses and language.

As a result of this, pockets of expertise have developed within banks and law firms dealing with Muslim clients entering into these documents.

The level of expertise tends to be transactional as opposed to a deep understanding of the various sources and layers of Shari'a.

Where complex questions of interpretation arise, Guernsey's banks and law firms will seek the opinion of a specialist expert – a Shari'a Scholar. Some banks in fact have their own internal Scholars or boards of Scholars.

The level of knowledge needed to penetrate the world of Islamic finance has been and still is quite misunderstood by many Western advisers.

There is a common misconception that a detailed knowledge of the Quran, the Sunnah, the Ijmaa and the Qiyaas is required in order to advise clients. That is absolutely not the case.

Knowledge of what is and is not permissible in the context of specific financial transactions is important and this knowledge can be passed on relatively easily to both Muslims and non-Muslims.

Where there are grey areas or new types of transaction Scholars can be consulted.

The important thing to understand, as with any client project, is: *what is the client trying to achieve?* For Muslim clients, there is the added dimension and subtlety of what the client's attitude to Shari'a is. For some clients, hard wiring the Shari'a rules and principles into the transactional documents is the best way, for others, something more fluid and flexible is preferred.

The same is true with succession planning.

(ii) Succession Planning

Under Shari'a principles there are very prescriptive rules about who inherits on death and in what proportions. This area involves advising clients about setting up wealth planning structures to either adhere to or plan around these rules.

In terms of succession planning for Muslim clients, we have seen a key shift in focus in the last two to three years in Guernsey in the approach to Shari'a structuring taken by those families looking to depart from the strict Shari'a inheritance rules.

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For a lot of Middle Eastern Muslim families, the business founders are now in their eighties, the children are usually working within the business and the grandchildren (often Western educated) are about to enter the business.

For a lot of families (by no means all), there is a drive towards the core principles of justice and fairness and a need to benefit heirs equally irrespective of gender.

Historically in Guernsey, the approach was to "circumvent" the prescribed Shari'a inheritance rules by drafting discretionary trusts so that male and female heirs could potentially benefit more equally or female heirs could even benefit more. There would be a reliance on Guernsey's firewall legislation to shield the trust from an attack by an aggrieved male heir through the Islamic Courts.

This "circumvention" approach, was perfectly legal and common place under Guernsey law and was even stress tested and endorsed by the Guernsey Courts in the case of *Rothschild Trust Guernsey Ltd v Pateras Ltd* in 2011.

That said, Guernsey advisers looked to find an approach which did not necessitate "circumvention".

In recent years, Shari'a experts such as Shaykh Haytham Tamim and Reshmi Manekporia have come to Guernsey and promoted succession planning for Muslim clients which permits a departure from the strict Shari'a inheritance laws while still remaining Shari'a compliant.

This modern approach takes its starting point as the overarching Shari'a maxims of justice and fairness.

Applying this to a client situation, sometimes we meet with clients and they explain to us that female heirs have more of an aptitude for the family business or have worked harder than the male heirs. Families may then wish to benefit the female heirs in greater measure to the men. This is achievable within the Shari'a as it is fair and just for the female heirs to receive more based on their efforts.

As such, it is possible to draft a valid succession planning structure within the Shari'a which benefits female heirs equally or more without having to "circumvent".

For larger structures or families where there is the possibility of future family conflict, we advise the families to go the extra step of having a Scholar's opinion to confirm that the structure is Shari'a compliant.

So there has been a subtle shift in Guernsey's succession planning work for Muslim clients in recent years – a shift which, again, demonstrates Guernsey's understanding of the needs of modern Muslim families and, again, demonstrates Guernsey's ability to adapt to change.

What about Ex-Pats?

Guernsey has also been a very popular place to bank and establish structures for non-Muslim clients who are resident in Muslim countries. Why?

Often, the inheritance laws in Muslim countries are unclear in their application to non-Muslims and there is often no system of precedent and, therefore, little certainty as to how the assets and affairs of a non-Muslim would be dealt with in the Muslim country.

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This has also shifted slightly in recent years with the introduction of specialist Courts and authorities in Muslim countries to deal with the affairs of ex-pats in accordance with common law principles (such as the Wills and Probate Registry in the DIFC in Dubai and the planned Wills and Probate Registry in Abu Dhabi).

However, there is still a tendency for ex-pats to restrict their exposure to Shari'a law applying to their affairs by limiting the value of their assets in the region and keeping the bulk of their wealth offshore.

The same is true of pension arrangements for ex-pats in Muslim countries where there is no formal pension regime. Employers often fence assets to fund end of service gratuity payments offshore in Guernsey.

In terms of Muslim non dom "ex-pats" living in the UK, the anticipated introduction of the non dom changes in the UK have been something of a rollercoaster over the last year or so!

The non dom changes were withdrawn from the Finance Bill at the last minute earlier this year and are now anticipated to be introduced in a second Finance Bill after the summer Parliament break, with effect from 6 April 2017.

Again, Guernsey has been stealing a march in contacting these clients to explore establishing protected trusts and to begin to audit mixed funds.

We are still waiting until the final legislation is published but it is anticipated that there will be a further steady stream of new Guernsey trusts (and probably multiple trusts in order to avoid contamination) and these will continue as clients approach the deemed domicile threshold.

Conclusion

Over the previous decade, Guernsey has adapted to changes in market conditions and looked beyond Europe to new markets. This has enabled Guernsey to continue to grow and succeed despite a period of economic uncertainty closer to home.

The key is to continue to innovate and adapt and pioneer. The next developments in Guernsey include the introduction of pensions regulation and a possible update to the trusts law.

Angela Calnan is a Group Partner at Collas Crill LLP and is based in the firm's Guernsey office. Angela lived and worked in the Middle East for a number of years before relocating to Guernsey. She has practised as a solicitor in England, Dubai, Singapore and Guernsey. She is head of Collas Crill's Middle East Practice Group and also Guernsey's representative in London on The City UK's Islamic Finance Working Party.

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