

## INTELLECTUAL PROPERTY SERVICES IN GUERNSEY

Recent changes to the Intellectual Property (“IP”) Laws in Guernsey will bring the Bailiwick right up to speed with the rest of the world and provide a unique advantage for Guernsey as a place to manage IP in an offshore tax-neutral environment.

Traditionally offshore jurisdictions have not tended to be used for the management of IP, as their legislation has been considered to be outdated or not conclusive to the international recognition that IP holders require. The new IP laws that Guernsey has introduced address this by being both flexible and modern. They are still primarily based on UK laws, benefiting from some of the lessons learnt in the UK but also retaining flexibility from the European regime in that Guernsey is not within the EU. This provides a unique opportunity to afford protection where such protection does not otherwise exist and more generally affords Guernsey the flexibility to develop new laws to address the rapidly changing fields of IP application.

The Intellectual Property (Enabling Provisions) Bailiwick of Guernsey Law, 2004 created the power for the Guernsey government to introduce separate ordinances relating to IP. To date the following ordinances have been enacted:

- Copyright (Bailiwick of Guernsey) Ordinance, 2005
- Database Rights (Bailiwick of Guernsey) Ordinance, 2005
- Performers’ Rights (Bailiwick of Guernsey) Ordinance, 2005
- Registered Designs (Bailiwick of Guernsey) Ordinance, 2005
- Trade Marks (Bailiwick of Guernsey) Ordinance, 2006
- Unregistered Design Right (Semiconductor Topographics) (Bailiwick of Guernsey) Ordinance, 2006
- Unregistered Design Rights (Bailiwick of Guernsey) Ordinance, 2005

### **Taking Security over IP in Guernsey**

Raising finance on the back of IP rights in Guernsey will require security to be taken over that IP. As a well regulated and highly developed offshore financial centre, Guernsey has a well established security law in the form of The Security Interests (Guernsey) Law 1993 (the “Security Law”).

The Security Law provides that a security interest may be created in any intangible moveable property other than a lease.

For the purposes of securitisation structured financing, or more simple means of financing, it is possible to rely on Guernsey security over Guernsey based IP.

### **IP Holding Structures – Maximising the Advantages**

There are two main scenarios for IP businesses looking to take advantage of the new IP laws in Guernsey. The first would be the new IP intensive company which can operate from Guernsey and the second would be an existing company based, for example, in the UK establishing a subsidiary in Guernsey and subsequently transferring IP to that subsidiary. The transfer of IP at a stage when it has acquired significant value may have negative tax implications and hence the most tax-efficient approach is to generate the IP in Guernsey. This will, of course, depend on various tax issues in the UK or other relevant jurisdictions

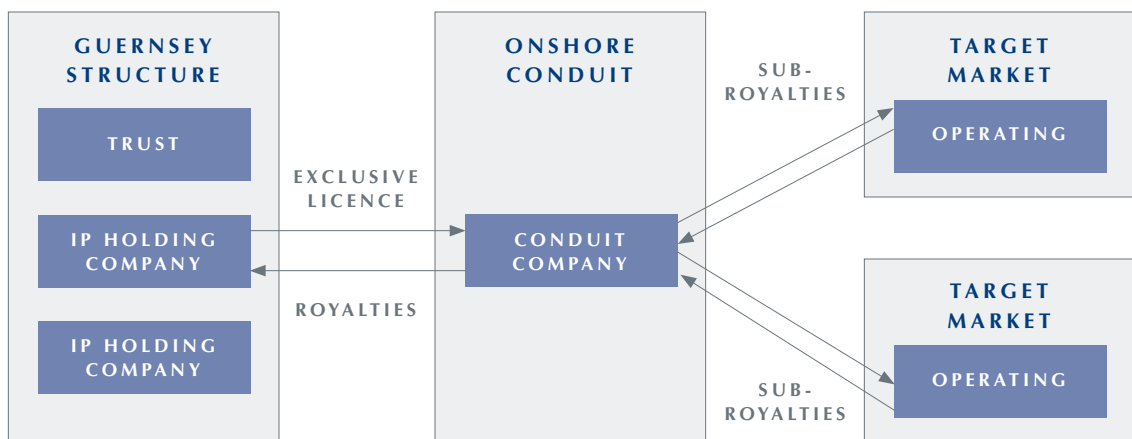
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and Guernsey and there may, in certain cases, still be advantages to transferring IP to a Guernsey vehicle within a group structure, not least because it can then become easier to attribute value to such IP.

The company formation process in Guernsey is well established, easy to use and Guernsey company law broadly follows English company law principles with some specific exceptions. The use of a trust structure combined with an IP holding company is a structure well known to Guernsey law and would provide several advantages as a vehicle for owning and managing IP in Guernsey .

A relatively simple scenario would be a Guernsey IP holding company establishing exclusive licensing structures with an onshore subsidiary company e.g. Cyprus that would be able to (i) take advantage of a large number of double taxation treaties with countries that have a high GDP and high market potential, and (ii) benefit from a favourable withholding tax regime in respect of royalties being transferred out of that country. The onshore company would then issue sub-licences to develop market potential in relevant jurisdictions. The Guernsey-based bankruptcy-remote trust structure would ultimately benefit from licensing revenues from the IP holding company thus facilitating long-term management and exploitation of IP in a tax-benign environment.

The use of a trust structure would depend on the specific tax advice received. The structure can be represented in the diagram below:



For more information on Trident Trust’s IP services, please contact Mark Le Tissier on +44-1481-727571.