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Our Ref: JN/MW/CORR/DS130411

13 April 2011

Dear Mr Scott

**Ref Financial Services Ombudsman Scheme for Jersey and Guernsey Consultation**

With reference to the consultation paper published earlier this year I set out below my response:

As a general principle I do not think it either appropriate or workable for such a scheme to be extended to the Island's trust industry. The paper itself whilst seeking to address the issue and create discussion demonstrates a lack of understanding of this particular area of the Island's finance industry.

In making this comment the following should be borne in mind:

- In a trust relationship there is strictly speaking no contractual relationship.
- Many beneficiaries are actually unaware that they are a beneficiary.
- Most beneficiaries are in reality 'discretionary objects' and as such have no absolute entitlement to benefit.
- The 'trust' relationship is not a retail product which is 'sold over the counter'. To elaborate most of the Island's trust business comes to us through an extensive 'gatekeeper' network comprising of private client legal and accountancy practices. The fact that a trust is established is a direct result of their advice and is something for which the settlor will have paid not inconsiderable professional fees for. It is not something we in Jersey 'sell' as such.
- The terms of a trust are generally a private matter between settlor and trustee any suggestion otherwise would seriously negatively impact the Island's trust industry.

In addition it should be remembered that in Jersey and Guernsey professional trustees are regulated by our respective Financial Services Commissions. A parallel should be drawn here with the United Kingdom where, to the current day, the trust industry is not regulated at all. As such disgruntled beneficiaries have an opportunity to raise unsatisfied complaints with the regulator in order to seek satisfaction.

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It should also be remembered that beneficiaries already have a mechanism by which they can challenge an action or behaviour of a trustee as they are free to instigate proceedings through the Royal Court should they feel they have a case.

To me the suggestion that an Ombudsman would potentially be able to arrive at a decision on commercial grounds which may have no basis in law is a particularly dangerous path to tread. The skill set required would also be vast as in Jersey and Guernsey it is possible to administer trusts under any applicable law. That is to say that it is quite conceivable for a Cayman or Bahamian law trust to be administered in Jersey for example.

I would also make the comment that the consultation paper itself offers so many exceptions or 'get out of jail cards' for trustees as to be meaningless in its effect.

On a more general point both Jersey and Guernsey have been seen to be leaders in the race to introduce twentieth and now twenty-first century regulation to the trust business on both Islands and are seen as world leaders in this regard. This coupled with the established legal framework and tried and tested history of the Royal Court provides more than adequate protection to users of the industry and the trust solution more generally.

Looking at the wider finance industry we need to be mindful that with a number of businesses operating across the two Islands a joint scheme must be seen as the way forward and its aim must first be to provide protection to the domestic consumer of financial services.

The costs of running such a scheme should however not be underestimated and the level of funding required needs to be carefully considered. The extent to which government and industry are prepared to contribute is also a factor as with too high a burden falling on industry the risk is that we make Jersey uncompetitive from a 'cost of business' perspective versus other jurisdictions.

In conclusion to proceed with any further with the extension of such a scheme to the trust industry is to me fundamentally flawed and should be removed from the agenda as soon as possible. To do otherwise will play in to the hands of competitor jurisdictions i.e. Singapore and will frankly make doing trust business in Jersey uncertain and unattractive for the international 'gatekeeping' community and would have the additional negative outcome of making Jersey a more expensive jurisdiction in which to do business.

Should you require any clarification of the above please do not hesitate to contact me.

Yours sincerely

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