

# Intellectual property in Guernsey

## Recent legislation, benefits and opportunities

### Summary

Guernsey has been busy updating the laws relating to Intellectual Property (IP). The enabling legislation and the new Ordinances now place Guernsey in a unique position in the offshore world and will create new economic opportunities for both corporations and individuals worldwide to register, protect and have their IP managed in a tax efficient environment. The key legislation, benefits and potential opportunities are outlined below.

### The new legislation

- The Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004
- Intellectual Property (Office of Registrar) (Bailiwick of Guernsey) Ordinance, 2005
- 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
- Unregistered Design Rights (Bailiwick of Guernsey) Ordinance, 2005
- Trademarks (Bailiwick of Guernsey) Ordinance, 2006
- Unregistered Design Rights (Semiconductor Topographies) (Bailiwick of Guernsey) Ordinance, 2005

Copies of these Ordinances can be found online at [www.gov.gg](http://www.gov.gg)

### Benefits

- IP laws up to the standard required by the WTO agreement on trade-related aspects of intellectual property ('TRIPS')
- Enabling legislation flexible enough to allow for the speedy introduction of new laws or amendment of existing ones (e.g. to take account of rapid changes in e-commerce, biotechnology and image rights)
- IP owners can now register their rights directly in Guernsey without having to first register them in the UK thereby reducing administration cost
- IP now recognised as moveable property in Guernsey meaning they are capable of sale, transmission, use as security and can be left by Will in the personal estate of the owner
- Income flows from the Rights can be collected in a tax efficient jurisdiction – Guernsey has low rates of income tax and corporation tax (the latter will be reduced to zero in 2008) and is free from capital gains tax and inheritance tax

### Opportunities

- Franchise and similar commercial operations can benefit substantially by placing their IP portfolios in Guernsey
- Such portfolios can be placed within flexible, tax efficient Guernsey structures such as Protected or Incorporated Cell Companies and Trusts that will allow royalties and license fees to flow to a low tax environment
- Maximum tax benefits will be obtainable by registering IP rights in Guernsey from the outset of their exploitation

- There is a good opportunity for E-business companies, such as application service providers, online music providers and media streaming businesses, as well as on line retailers and others making use of extensive databases because there is no VAT in Guernsey and goods shipped to the UK from Guernsey are free of any duties if sold for under £18
- Creative and design businesses such as writers, publishers, designers and architects will benefit from stronger statutory legislation protecting both IP and licensing rights
- Corporations with strong brand names associated with their products will be attracted now that they will be afforded statutory protection
- Pharmaceuticals and other research and development corporations can limit liability using PCC's and ICC's while at the same time protecting IP rights and income flows should development be successful
- Existing trademarks and designs can being migrated to the new registry

### **Future plans**

It is worth mentioning that consideration is already being given to protection of image rights, an area seen to be in demand amongst sporting and media celebrities. Also, that trademark owners will be able to use a Guernsey registration as a base mark for global applications from 2007.

### **RIDER**

This paper is intended as a general review and aide memoire. It does not create a retainer or lawyer-client relationship and does not provide comprehensive or specific legal advice concerning the matters contained within it. This paper should not be relied upon as giving or providing advice on any individual case.