

## Intellectual Property (IP)

### At a glance

#### Wealth Management / Tax Planning

- Creation & growth of IP value in a tax benign environment
- Income streams accumulated in an offshore IP holding company

#### Succession Planning

- Use of trusts to ensure rights and income streams passed to rightful subsequent generations

#### Fiscal advantages

- Potential mitigation of capital gains, income, corporation, VAT and similar taxes
- Tax allowances for onshore companies paying licence fees to offshore entities
- Mitigation of withholding taxes through appropriate DTAs

### General

Companies and indeed, individuals, are increasingly looking at effective locations to site ownership of, and exploit the benefit of, intangible assets such as IP. The palette of IP rights is extensive and it is clear that the development and incubation of value in IP rights is well placed to reside in tax-benign jurisdictions.

There are various reasons for setting up IP holding companies, such as effective brand creation/protection, licensing, management and exploitation, value incubation, image rights protection and risk insulation (where, for example, the owner desires to legally segregate risk-bearing activities from other operations).

There are numerous structuring solutions available including the use of stand-alone companies and so-called 'Cell' companies (to segregate risk or licensing activities), and the creation of balance sheet / bankruptcy remote structures (to avoid balance sheet consolidation through the use of trusts for example).

Consideration should be given at an early stage as to the method of extraction of value at some point in the future. Clearly such methods will vary according to the nature of the IP and the domicile of the recipient.

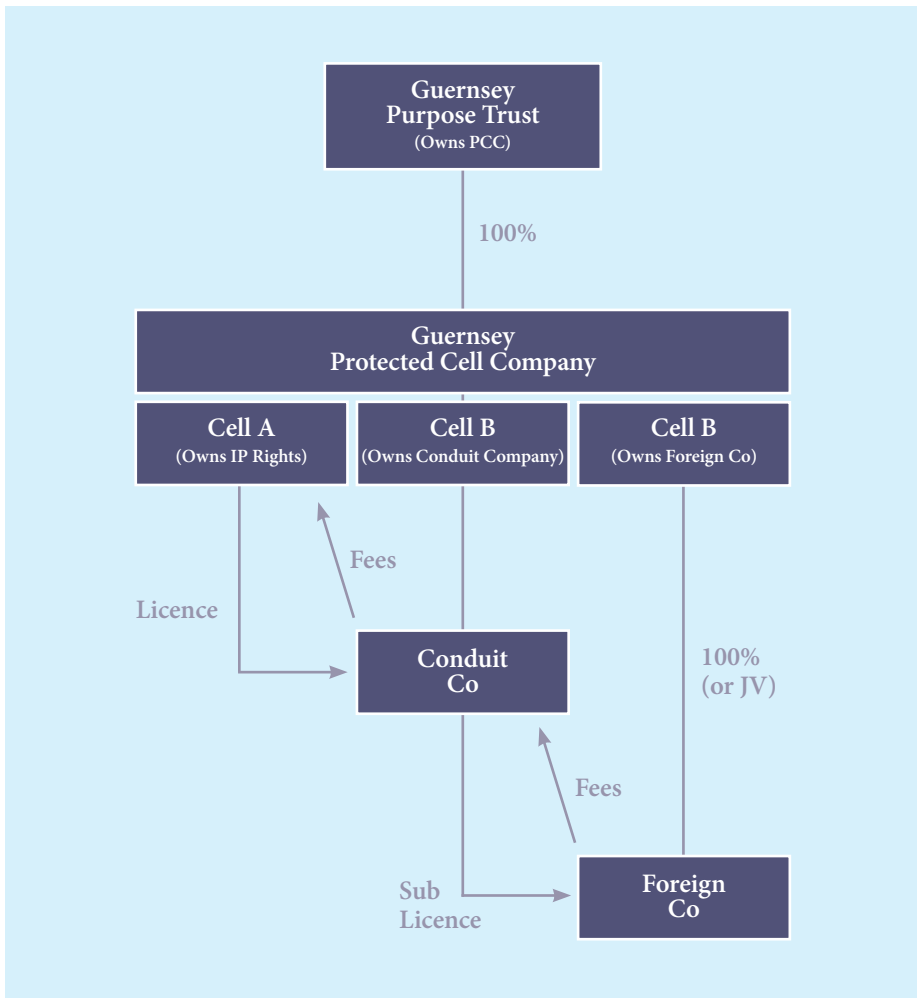
### Timing

It is invariably the case that at the outset of a business venture the IP will have little or no value. It is partly because of this that those creating it tend to focus purely on getting the business started (and generating much needed revenue). However, failure to consider IP structuring at the outset can lead to crippling fiscal inefficiencies or large tax liabilities on future re-structuring.

With the above in mind, the best time to decide upon the ownership entity and location of IP is when developing or exploiting IP from scratch or purchasing unexploited IP from a third party, as no licencing or exploitation 'value' will have been created.



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The use of a PCC is not essential but would aid flexibility as Cells can be created very simply and be used for any additional functions, each legally segregated from the rest of the operation. Clearly the other choice would be to use SPV(s) owned by the Purpose Trust.

- 3 The use of a conduit company provides for avoidance of withholding tax issues (a Cyprus company is often used as it has a very wide variety of DTAs).
- 4 The Purpose Trust would require an ‘Enforcer’ as there are no ascertainable beneficiaries to enforce the trust. It is the fiduciary duty of the Enforcer to police the trustees and to enforce the stated purposes of the trust. A trustee cannot also serve as an Enforcer of the same trust but the law does permit employees or associated companies of a trustee to serve as Enforcer. Newhaven provides entities that could fulfil this role.



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Please note that Guernsey is used for illustrative purposes only and that there are many structuring tools across multiple jurisdictions that can be used to structure IP ownership.

- 1 Using a Purpose Trust to own the PCC would ensure that the structure is balance sheet remote (avoiding tax and balance sheet consolidation issues).
- 2 Using the PCC (in Guernsey) as the central entity would enable multiple functionality (and keep costs down) and also provides accrual of IP Rights value in a tax benign jurisdiction.

## Contact

For further information on IP structuring or any other fiduciary structures, please contact your trusted client service associate or:

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