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GUERNSEY DATA TRUSTS

THREE IMPORTANT REASONS WHY YOU SHOULD USE THEM

Whilst the financial value in data is being increasingly recognised, data itself is starting to be seen as a commodity that perhaps is now more important than oil. However, whilst significant technical advancements continue to be made to safeguard data, advancements in the legal tools to protect data have possibly lagged behind. Further, different countries continue to introduce conflicting requirements for protecting and requiring disclosure of data (such as the EU's General Data Protection Regulation and the US PRISM program), creating the so called "splinternet" phenomenon and additional legal risks for international businesses.

To solve these issues, at Walkers we have been working on a project to develop an innovative legal structure to hold and protect data.

GUERNSEY DATA TRUSTS

Trusts are extensively used in Guernsey to protect assets. A trust is a legal arrangement whereby a person (the settlor) transfers assets to another person (the trustee) to hold for the benefit of the settlor or other persons (the beneficiaries,) or for a specified purpose. The trustee becomes the legal owner of the assets, which the trustee must manage for the benefit of the beneficiaries or for the specified purpose. The terms on which the trustee holds the assets are set out in a trust instrument document. A Guernsey trust can be used to hold any types of assets, and any share, right or interest in the assets, including tangible and intangible property, and other rights and interests. In relation to data, examples of rights could include intellectual property rights in the data as well as licences to access, process and store the data.

Under a data trust, the trustee would hold the rights to the data, is legally responsible for the data and must apply the data for the benefit of the beneficiaries, or for the purpose of the trust. Importantly, the rights attaching to the data should be held by the trustee in Guernsey (although a third party data centre in Guernsey could be used to store the data) in accordance with Guernsey law requirements, including for data protection. The settlor and beneficiaries can be located anywhere in the world.

GUERNSEY DATA TRUST BENEFITS

1 Unlike other structures for hosting data, a Guernsey data trust achieves a helpful distinction between the legal and beneficial ownership of data. The trustee is legally responsible for the data, and must comply with Guernsey's regulatory requirements in relation to the data, whilst applying the data for the benefit of the beneficiaries, or for the stated purpose, of the data trust. The settlor and the beneficiaries will benefit from additional protection for the data, because any claims from third parties in relation to the data should be brought in Guernsey against the trustee (not against the settlor or the beneficiaries), which must comply with Guernsey law.

DATA PROTECTION BENEFITS

2 For over a decade, Guernsey has been one of only 11 non-EU jurisdictions whose data protection regimes benefit from an adequacy decision of the EU Commission. Further, in April 2017, the States of Guernsey announced that it was committed to introducing legislation that implements the EU's General Data Protection Regulation (GDPR) to maintain the island's adequacy status. In relation to data trusts containing personal data, the trustee would be a data controller of the data for data protection purposes and must hold the data in compliance with Guernsey's data protection requirements. This should enable the easy flow of personal data to and from EU and EEA countries and the trustee. By using a Guernsey data trust it should be possible for businesses in jurisdictions that are not compliant with EU data protection requirements to appoint a Guernsey data trustee in order to satisfy those requirements.

INTELLECTUAL PROPERTY BENEFITS

3 Few countries outside the EU have database rights. However, Guernsey has introduced database rights legislation based on the EU model, but unlike the EU, Guernsey permits a database right to exist even if the data is created by the author of the database. This difference is important for protecting databases of the results produced from analysing data, since those results are likely to constitute newly created data, which might not otherwise be protected by database rights elsewhere. Guernsey was also the first jurisdiction in the world to enable registration of image rights, to determine and enable the commercial exploitation and protection of image rights associated with a person. Guernsey image rights are a property right that can be licensed and assigned. Database rights and image rights in Guernsey are useful to provide certainty as to the assets held within the data trust, for example by creating legal rights existing in a database or the image held by the data trustee.

GUERNSEY DATA TRUSTS ARE THE IDEAL VEHICLE TO HOLD DATA

Guernsey trusts are an established arrangement for adding legal protection to assets. Combined with Guernsey's international internet connectivity and track record, which has been developed from its leading position in E-Gaming, its EU data protection adequacy and its additional database and image rights protection, Guernsey data trusts are an ideal solution for businesses that require data protection compliance and additional legal safeguards to protect their data.