

INTRODUCTION

Image Rights, which can often be a collection of various intellectual properties relating to a well-known person, team or other body, can perhaps best be described as:

“The exclusive rights to control commercial use of a person’s name, image and other identifying characteristics”

In the worlds of sport, entertainment and fashion, these Image Rights are often of significant value and their exploitation can generate a substantial proportion of the owner’s income.

As a result, Image Rights management and structuring are important planning tools, particularly where exploitation can be undertaken in whole or in part outside of the jurisdiction of tax residence.

GUERNSEY AND IMAGE RIGHTS MANAGEMENT

Within this note we aim to establish three key reasons why we believe Guernsey is the premier jurisdiction for establishment of an Image Rights management structure. These can be summarised as:

- Thoroughly modern intellectual property laws plus a declared intention to introduce specific legislation recognising and allowing registration of Image Rights
- A favourable fiscal regime including an absence of withholding taxes

- First class professional service providers and supporting financial services with a well-established track record in wealth management for high net worth individuals.

IMAGE RIGHTS MANAGEMENT - BASIC PRINCIPLES

For many holders of valuable (or potentially valuable) Image Rights, significant long-term savings can be made both in income and capital taxes, particularly where the persons concerned are able to exploit their images in areas incidental to their main profession and in diverse jurisdictions.

There are also many other non-tax reasons for separating tax-neutral Image Rights into a separate legal entity, not least of which are for future estate planning and asset protection reasons. Image Rights can survive and be valuable long after the death of the individual (see Elvis Presley or Marilyn Monroe for example) and can also be valuable assets to protect from the risks of personal bankruptcy in the same way as more traditional assets.

It can be advantageous to separate rights relating to certain jurisdictions from others. For example, a UK resident but non-domiciled footballer may be able to structure his Image Rights in such a way as to shield his non-UK, non-remitted income from UK tax, although income arising in the UK will probably be taxable there.

As with most planning, timing is important. The earlier an image right can be assigned or sold into the management vehicle the better as there is often a capital gain to be taxed at the point of

assignment and this is obviously reduced when the asset can be justifiably valued at a lower figure. Advisors need to weigh up the costs of setting up a structure against the likelihood of the Image Right developing into a valuable asset.

For some, their personal fiscal and other circumstances mean that planning opportunities are reduced to tax deferral schemes without any real ultimate mitigation possibilities.

INCOME STREAMS

Royalties or other income can be received into a Guernsey company and will not be subject to local taxes so long as the beneficial owner is not tax resident in Guernsey. **Guernsey has no capital taxes or death taxes and no VAT, GST or other indirect taxes are levied.**

Depending on the source of the royalty payments, withholding taxes might be applied by the payer. However, it is often possible to reduce or negate these by careful planning and routing of income streams through appropriate jurisdictions.

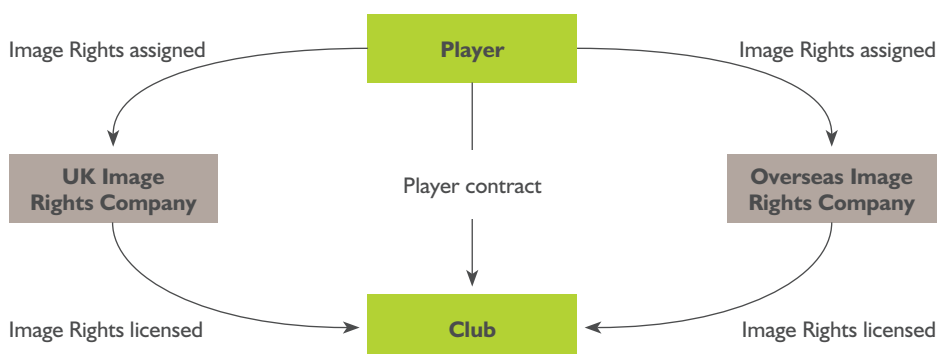
LEGAL POSITION OF IMAGE RIGHTS

Whilst Image Rights bear many of the hallmarks of more traditional Intellectual Property concepts, such as trademarks and, in some cases, copyrights, they are not a defined right capable of registration for protection. Therefore, protection against unauthorised use of an image right will often require the application of one or more sympathetic laws.

MANAGEMENT STRUCTURE

The following diagram illustrates a common and relatively straightforward Image Rights structure for a UK resident, non-domiciled sportsman. Additional sophistication can be incorporated as required.

This is a fairly standard structure wherein the Club has contracted to exploit all of the Player’s Image Rights, whether or not directly related to his role within the Club. In some circumstances, the non-club related activities can be retained as separate and, in these cases, the respective Image Rights Companies may contract directly with third party sponsors.



Well-known examples of the types of protection that have been afforded include more generic rights such as 'false endorsement' or 'passing off', demonstrated in cases such as *Eddie Irvine v Talk Radio* or *David Bedford v 118118*. Alternatively, privacy laws and breach of confidence were used in the matter of *Douglas v Hello!* to obtain a favourable result on behalf of the plaintiff.

The States of Guernsey, through the Intellectual Property Office ("IPO") has introduced a wide raft of updated Intellectual Property Law since the IPO's establishment in 2006 and have indicated further Laws and Ordinances that are to be enacted.

One of the most interesting of these is a plan to define and create a legal register of Image Rights in Guernsey, thus allowing owners of such rights to register them here and thereby create a more clearly separable and marketable asset. While protection of the registered image rights might still prove difficult to enforce outside of the Bailiwick of Guernsey, there are significant other potential benefits in registering them here, including:

- The establishment of a legally recognised asset, which can more easily be marketed, traded or charged as security for the raising of finance
- A registered IP asset that can be linked to various other internationally recognised IP rights

These benefits provide an increased rationale for basing any image rights management structure in Guernsey.

It will be extremely advantageous having a registered Image Right in Guernsey and will provide a substantial point of differentiation from jurisdictions that set up these structures but do not have such supporting legislation.

ISSUES TO CONSIDER

To prove effective and resilient, any structure put in place should be managed and administered in such a way as to reflect the genuine reasons for its establishment. The following are some specific issues worth considering:

- Ensure complete chain of documentation executed to ensure rights properly assigned
- Rights should be assigned permanently
- Consideration should be paid for the assignment to avoid potential voiding of the transaction
- This consideration should be realistic compared with the rights assigned. Avoid nominal amounts as will raise suspicion
- Timing of assignments important to minimise value attributable. Also assign prior to change in jurisdiction where appropriate
- Ensure licences entered into by the image rights companies, not the individual
- Avoid sham structures. Ensure ratios of image rights to salary and other benefits are realistic.
- Overseas companies should be managed outside of onshore jurisdiction. This includes locations of board meetings, signing of contracts and location of decision making processes.

GUERNSEY TRUST COMPANY ("GTC")

GTC is a fully licensed fiduciary services company owned by Collas Crill, one of the best-recognised names in the Channel Islands legal market. We offer all the necessary skills and knowledge for the creation, management and administration of a wide variety of image rights structures, from the formation of simple trust and corporate vehicles, through to complex multi-asset holding structures utilising Protected Cell Companies or Incorporated Cell Companies.

Our experienced and professional staff are used to acting for wealthy and well-known individuals and it goes without saying that discretion and confidentiality are paramount in all our dealings.

Our systems, training and procedures are all geared towards providing a first-class service and results.

Finally, our access to in-house legal expertise means that we are ideally placed to ensure that all aspects of any scheme documentation are fully compliant with Guernsey law.

CONCLUSION

Image Rights structuring is an important tool for advisors dealing with high profile clients. To discuss how we can help you to create and manage these, please contact us as below or via your normal GTC or Collas Crill representative.

For further information or professional advice, please contact:

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