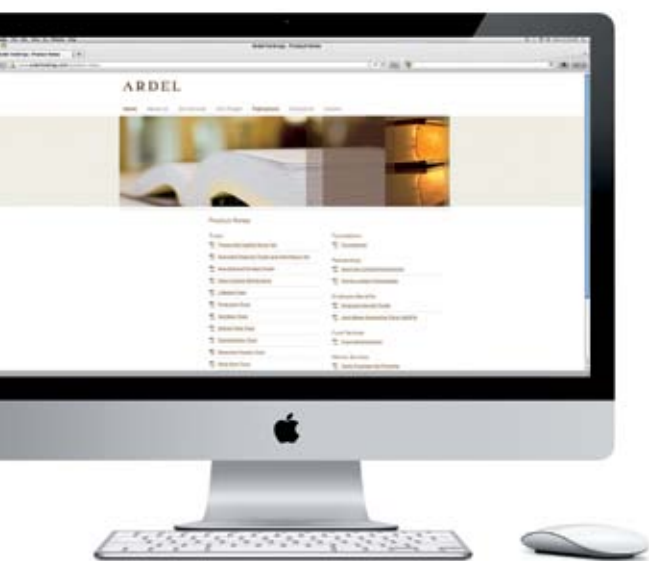


# communiqué

ARDEL NEWSLETTER

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## Ardel product notes now online

All of our product notes are now available on our website at [ardelholdings.com/product-notes](http://ardelholdings.com/product-notes). If you would prefer a printed pack of our product notes please contact Kirsty Martel on +44 1481 731143 or [kirsty.martel@ardelholdings.com](mailto:kirsty.martel@ardelholdings.com).

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## Aircraft registry to be established in Guernsey

Guernsey's fiduciary sector will soon be able to reap the benefits of a new aircraft registry that island authorities have agreed to establish.

Currently aircraft belonging to both local Guernsey residents and those held through fiduciary structures on behalf of clients are generally registered in the Isle of Man, which has had an established registry for a number of years - now with approximately 400 aircraft on it.

The new registry will need the approval of the UK authorities, as it will be a sub-registry of the UK Civil Aviation Authority – in the same way as the Isle of Man.

This decision by the Guernsey government is a further illustration of the island's on-going commitment to creating a modern and flexible legal framework to enable businesses to offer innovative financial planning solutions to their international client base. With an estimated £18 million income

for the island within three years of its establishment, local authorities see this latest move as a useful addition to the fiduciary sector's financial planning toolbox and a new platform from which to market its services.

*"Ardel Trust, unlike many of its competitors, holds the full spectrum of assets within its fiduciary structures."*

Ardel Trust, unlike many of its competitors, holds the full spectrum of assets within its fiduciary structures, from commercial and residential real estate to works of art, aircraft and even race horses and welcomes this latest innovation from local government.

ARDEL

# Can you protect pre-acquired wealth against divorce?

In 2000, the landmark decision in *White -v- White* introduced the basic principles of “fairness” and “non-discrimination” in financial settlements upon divorce. Until then a wife who had stayed at home raising a family would usually leave the marriage with her “needs” met, leaving the husband with the majority of their wealth. The case implemented a cross check of the award against “the yardstick of equality”.

The judgement also gave rise to debate as to the treatment of pre-acquired wealth which is potentially treated differently; representing a contribution made by one party which is unmatched by the other.

Earlier this year in the case of *N-v-F* Mr Justice Mostyn compared the approaches which the Court has adopted in recent years. In dismissing one of the favoured views, namely making an adjustment to the overall award from 50%, he championed a two-step approach namely:

- Whether the existence of the pre-acquired wealth should be reflected at all, which depends on the duration of the marriage, the intermingling of the pre-acquired assets and those generated during the marriage
- If it is appropriate to reflect this, a decision is required as to how much of the pre-marital property should be excluded. Should it be the actual historic sum, or less if there has been intermingling, or should the value of the pre-acquired assets be increased to reflect a springboard and passive growth?

The remaining assets will usually be divided equally with the proposed outcome then “tested” against “fairness” with reference to the overall percentage split.

Of course all of this is subject to the question of need, quoting from the Judgment in *White* “... in the ordinary case, this factor can be expected to carry little weight, if any, in the case where the Claimant’s financial needs cannot be met without recourse to this property.”

## WHAT STEPS CAN BE TAKEN TO AFFORD PROTECTION?

In addition to taking advice and seeking to establish and maintain Trusts to protect pre-acquired wealth, wealthy individuals, including those who are non-domiciled but proposing to live in the UK, would be well advised to seek to protect and safeguard their assets by entering into a Pre-Nuptial Agreement.

The Supreme Court in *Radmacher -v- Granatino* last year decided “the Court should give effect to a Nuptial Agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement.”

The use of Nuptial Agreements should be considered as an important part of holistic wealth planning. It is recommended that wealthy individuals should consult family lawyers as complementary advisers in a comprehensive approach to asset protection and wealth preservation.



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## Another first for Guernsey – image-ine!

Guernsey is set to become the first destination in the world to introduce a register for the protection of image rights. Following extensive consultation with local industry, local authorities have approved the introduction of specific legislation for the purpose and plan to have the legal framework in place in time for the 2012 Olympics.

Building on the island’s already enviable reputation within the Intellectual Property arena, this move will create the ideal complementary platform for the island’s finance sector to market their services, and it is anticipated that the potential incremental business attracted will generate significant income for the island’s economy.

Image rights are essentially the rights to control the commercial use of a person’s identity and images associated with that person, including distinctive expressions, characteristics or attributes. Most celebrities and sportsmen earn a significant percentage of their income from image rights contracts. The new legislation will create contractual certainty and ensure these rights are afforded full protection during and beyond an individual’s life.

The intellectual rights registry will be managed by the already existing Guernsey Intellectual Property Office - part of the Guernsey Registry.

# Advising the US client



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US taxpayers are almost unique in relation to how most countries tax their citizens and residents. Regardless of where one may live, the US imposes taxation on worldwide income and gains.

Tax treaties exist between the United States and many countries such as the UK that are designed to avoid double taxation. However, it still remains that a US client living outside of the US has the spotlight of US taxation on financial planning. This has wide ranging implications on everyday financial products such as life insurance, pensions and many investment vehicles, if those products are held outside of the US.

In addition, there are a number of individuals who may be classified as a US taxpayer despite holding another passport. Examples include (but are not limited to):

“Tax treaties exist between the United States and many countries such as the UK that are designed to avoid double taxation.”

- Greencard holder, regardless of country of residence
- Individuals substantially present / residing in the US
- Deemed US taxpayer through place of birth or parentage

A product provider or adviser may not realise their client is a US taxpayer. The US is introducing legislation under the Foreign Account Tax Compliance Act ('FATCA') that will require foreign financial institutions, such as investment managers, insurance companies and trust companies to identify and disclose their US clients. Therefore it is more important than ever for providers of financial products and their advisers to understand the implications of serving a US client.

Legislation in the UK for Qualifying Recognised Overseas Pension Schemes (QROPS) has been available since Pension A-day (6th April 2006). Planning is complex for the US taxpayer, due to the loss of benefits under the USA/UK Double Taxation Convention and exposure to worldwide taxation and reporting beyond the UK pension. QROPS opportunities have now begun to emerge but it is critical the pension is established and run in an appropriate manner for a US taxpayer and the pension trustee assists in the US tax reporting obligations.

For the American planning on returning home to the United States or the Brit retiring there, an appropriately constructed QROPS can offer a number of benefits, such as

- Tax efficiency for a US taxpayer
- A pension with a base currency of USD instead of GBP
- Investment options designed to appeal to the high net worth client
- A future pension arrangement that reduces the requirement to understand the USA/UK Double Taxation Convention and UK pension law

With specialist advice, the US client has the opportunity to examine these benefits and determine if an appropriately structured QROPS is an attractive option for them.

## Ardel Atlantic Plan

When dealing with US clients a QROPS needs to be appropriately constructed. One such vehicle is the Ardel Atlantic Plan which is an innovative and flexible pension scheme designed especially for US connected individuals who are considering leaving the UK or are already non-resident.

Please further information please contact Scott Clayton on tel+ 44 0203 356 9763 or email [scott.clayton@ardeltrust.co.uk](mailto:scott.clayton@ardeltrust.co.uk)



# Guernsey at the core of cells

It was 14 years ago that Guernsey led the way in pioneering the Protected Cell Company (PCC).

Initially, the PCC was created for use within the Captive Insurance sector – a field in which the island excels, being the favoured European jurisdiction and number four in the world. A Guernsey Protected Cell Company (“PCC”) is a single legal entity. It is one company with one board of directors, one share capital and one memorandum and articles of incorporation.

A PCC comprises a “core” and any number of cells. Those cells can be created simply by a resolution of the board of directors of the PCC.

The PCC was used to encourage the captive market by creating a framework where individual organisations could share a captive structure as a far more cost effective solution than creating individual captives. The PCC and the more recent Incorporated Cell Company (ICC) continues to be widely used as a vehicle within the Captive Insurance market but these structures are now widely used by financial service providers across a broad spectrum of structures and products. Guernsey introduced ICC legislation in 2006. The key difference between the two vehicles is that Incorporated Cells (ICs) are separate legal entities in their own right, which can make transacting with third parties (or with each other) more straightforward. The choice of the better option between the ICC and PCC will wholly rely on individual situations and objectives.

Whilst a large number of other jurisdictions have since followed in Guernsey’s footsteps by developing their own cell company legislation, the island has developed unequalled expertise and experience in this field since the first one was established back in 1997.

Within the fiduciary environment the uses of cell companies are wide. An area where Ardel foresees potential growth is that of image rights. The Guernsey authorities – again showing their pioneering tendencies - have now agreed to develop legislation to establish the world’s first image rights registry. Holding image rights within Guernsey incorporated entities will offer a range of advantages if appropriately structured including the provision of a convenient focal point for contractual reference.

The cell company can offer a cost-effective planning solution within the image rights arena – particularly for less well-known but aspiring ‘celebrities’ whose image values are still relatively low. For a sporting team, for example, a cell vehicle would be ideal with each member holding shares in a separate cell but with the intellectual property and image rights of the entire team managed within the same structure. Equally, because of the flexible nature of Guernsey’s ICC legislation, at a later point in time an individual cell can leave the umbrella structure and convert into an ordinary company – meaning that if one player’s image value grows at a much faster rate than others and it becomes financially viable to go it alone, he has the option of doing so without beginning the incorporation process from scratch.

The cell company also offers interesting tax planning opportunities and estate planning benefits. For example, non-domiciliaries in the UK, holding UK property through a Guernsey Cell Company can change its situs for Inheritance Tax purposes; Capital Gains can be deferred while assets are managed at cellular level; different assets and beneficial interests can be apportioned between cells to help separate inheritance entitlements.

Equally for small and medium size businesses the concept of ‘rent-a-cell’ first used within the captive insurance domain can bring real cost advantages. The cell framework enables a company to share the costs of one central administrative ‘hub’ by becoming part of an umbrella structure providing real economies of scale.



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“The cell company legislative framework in Guernsey enjoys an enviable reputation within the global financial world.”

The cell company legislative framework in Guernsey enjoys an enviable reputation within the global financial world. This versatile tool has developed significantly since its creation in 1997 and continues to be widely used within the fiduciary sector independently or as part of a more complex wealth planning structure. An example of Guernsey’s innovative thinking at its best!

# Planning for the future in difficult times



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I think we can certainly say that we live in interesting times. The global financial crisis is far from over and there is the real possibility that it will last for much longer than was originally anticipated. The Bank of England pumping an additional £75bn into the UK economy is a good indication that it will take longer to return the UK economy to normality and the Euro zone has its own very real problems. Not to mention the various issues impacting the landscape in Switzerland.

For Ardel and our clients the position continues to be far from satisfactory with uncertainty being a significant concern when it comes to both forward planning and in transacting day to day business. This continuing uncertainty runs the very real risk of creating a paradoxical "inertia of inactivity" but the reality is that this is an ideal time to be planning for the future.

At the heart of the trust is the concept that legal title to the trust property is vested in the trustee. As a result the trust can often be the ideal vehicle to be used for investments or other asset types if there is a requirement to protect the client's confidentiality. At the same time, provided the trust deed is drafted appropriately, a beneficiary may be able to retain a significant element of control over the investment of trust funds.

A trust today, both UK resident and offshore, is the culmination of a long line of both structural and legal development stretching back to the Middle Ages. It is an outstandingly flexible vehicle for management and disposition of property and its benefits are available to individuals from all parts of the world. The ideal structure for these difficult times, when there is often a need to act swiftly to mitigate risk and protect property, the creation of a trust is one step that can be taken by way of insurance against the vicissitudes of life.

For more than 35 years Ardel has been involved in the formation of trust structures and with offices in Guernsey, New Zealand, United Kingdom and Switzerland we are ideally positioned to meet clients UK domestic and cross border planning requirements utilising appropriate structures in premier league jurisdictions across the world.

"If anything the crisis has shown us that good financial planning coupled with the flexible nature of discretionary trusts make trusts an ideal planning tool capable of reacting to change and adapting accordingly. "

If anything the crisis has shown us that good financial planning coupled with the flexible nature of discretionary trusts make trusts an ideal planning tool capable of reacting to change and adapting accordingly. The main uses of a trust structure can be summarised as follows:

- Estate planning designed to avoid disruption on death.
- Tax planning including forced heirship concerns
- The consolidation of global assets/wealth management
- Protecting the young and the weak from exploitation
- Asset protection issues
- Continuing a family business and preserving the family fortune
- Confidentiality





Picture supplied courtesy of The Guernsey Press

# Children's Book Week

## Ardel brings illustration to island's students

Students around the island were enthused by illustration this October as three top illustrators visited the island for the 2011 Children's Book Week.

The event, which was organized by the schools' Library Service and sponsored by Ardel Holdings Limited, took place at venues and schools around the island.

Chris Wormell, Sonia Leong and illustrating duo Metaphrog met nearly 5,000 young people in the Bailiwick, giving them the opportunity to hear them talk about their work.

Rachel Mahy from the Schools Library Service was particularly excited about Manga specialist Sonia Leong's visit, and so pleased with the students at La Mare de Carteret High School's response to her Japanese comic workshop

"They loved it. She is truly a great artist and I think both children and adults can learn a lot from her work"

Metaphrog are best known for their series of comics called 'Louis'. One half of the Glaswegian duo John Chalmers was enthused by meeting the students at Vale Junior School.

"I find it very inspirational speaking to them about books and reading – it means I can grow as a comic creator and learn about new ideas"

There were also competitions involving each of the special guests broken down into three age groups, with book tokens and a book from one of the visiting authors presented to the lucky winners.

# Ardel staff clock up a century

Four Ardel employees have clocked up over 113 years of working for the company.

JP Bisson is the latest member of staff to celebrate 25 years of service. Other staff members who have celebrated this milestone are; Karen Gillen – 31 years, Martyn Russell – 29 years and Ian Rouget – 28 years.

"The people make the company and without them, we would lose our identity."

When they all started working for Ardel (then known as Bachmann) the company operated from Lyric House and employed nine staff. The company has since grown to employing 120 people around the world in Guernsey, Switzerland, New Zealand and the UK.

JP Bisson started as a trainee in 1986 following the completion of his BA Economics degree in London.

The variety of work and clients involved in all kinds of businesses has kept things interesting over the years for JP.

The company was only 45 people strong when JP joined, and he has enjoyed seeing it grow – especially training people and watching their careers develop.

He also reflects that it is the unique characters of the staff at Ardel that he has met along the way which have made his career so fulfilling:

'The people make the company and without them, we would lose our identity'

Karen Gillen, Martyn Russell, Ian Rouget and JP Bisson



Representatives of all the charities that benefitted:

Alzheimer's Society  
GSPCA  
Guernsey Cheshire Home  
Guernsey Chest and Heart  
Guernsey Society for Cancer Relief  
Guernsey Women's Refuge  
Guide Dogs for the Blind  
Headway  
Les Bourgs Hospice  
Orchidians  
Pink Ladies  
Priaux Premature Baby Foundation  
RNLI  
SANDS  
Tumaini Fund  
Wigwam



## Staff swap suits for cash

In October 2011 Ardel staff paid out £8,800 to 16 local charities, by simply swapping office wear for comfy casuals every Friday.

Ardel has a Mufti fund into which staff members make a discretionary monthly donation via their salary. This enables the staff to dress down on a Friday and helps raise much needed funds for local charities across the island.

Staff vote for the charities they would like to see benefit from this initiative, and on this occasion 16 came out on top (see left)

Gerry Williams presented each of the charities with cheques at a special lunch attended by representatives of the staff. This proved an excellent opportunity for them to find out more about the work each charity undertakes and just how important their donations are.

Chairman of the Trustees of the Guernsey Society for Cancer Relief, Keith Richard said,

"We spend over £100,000 a year helping relatives and carers with air trips to the UK; providing carers to enable sufferers to stay in their own homes; and a myriad of other smaller items. We are so very grateful for Ardel's donation which will help us in this work."

Susan Wilson, founder of the Tumaini Fund said;

"The amount is enough to send 8 orphans to secondary school in 2012 - this will change their lives - only 7% of children in Kagera get the opportunity to go to secondary school and without a secondary school-leaving certificate, it is impossible for them to get a job in Tanzania."

## Memory Walk

"As we rely on sponsorship and fundraising we very much appreciate the support we get from all sections of the island community."

"An enjoyable day out for a very good cause"...

8 members of staff from Ardel Holdings took part in the Alzheimer's Society's Memory walk September 2011. Along with a menagerie of husbands, children and dogs they raised £280.

The walk took them along the stunning coastal footpath towards the Cobo nature trail and on to Saumarez Park, where refreshments and live music greeted participants.

A raffle, bookstall and children's games also kept everyone amused throughout the afternoon. Mel Le Page enjoyed the day,

"Some of us stayed at the park and enjoyed looking at the stalls, buying raffle tickets (and



winning a few prizes), and the children had lots of fun on 'splat the rat'."

The Memory Walk is the Alzheimer's Society's biggest fundraising event of the year. 150 people in total took part in the walk, together raising approximately £5,000. This money will be put towards providing local services and support to people and families living with dementia.

Michael Nicholls, Dementia Support Worker thanked staff for their fundraising efforts for the Alzheimer's Society

"As we rely on sponsorship and fundraising we very much appreciate the support we get from all sections of the island community."

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## Important information

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