

The golden opportunity created by the post-financial crisis compliance boom

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The decade since the financial crisis has unquestionably seen a very substantial increase in the quantity and complexity of regulation and compliance obligations applicable to financial services. Is this a malign fetter on the ability for entrepreneurs to do business? Or some much needed steps to protect all of us against future crises?

An important initial point to recognise is that not all the regulation which has followed the financial crisis has been as a consequence of the crisis or designed to prevent similar events occurring in the future. Clearly, some of the regulation has been for this purpose – the Dodd-Frank legislation in the US, Basel III in the EU, the AIFMD in the EU, new regulations relating to credit rating agencies, executive compensation, derivatives, and so on. But equally, there has been a substantial body of what many would classify as new or expanded regulation which may have followed after the crisis in time, but has not truly been a response to it. Examples of this would include FATCA, CRS, the TIEA network, enhanced and expanded AML obligations, a much more extensive international sanctions regime, and greater public and/or non-public disclosure obligations (such as corporate beneficial ownership).

So without a doubt the last decade has seen materially more regulation and a consequential greater compliance burden – but not all of it can or should be laid at the door of the financial crisis.

And has the significantly thicker statute books and correspondingly bulkier compliance manuals made the world in general and Guernsey in particular a better place?

In relation to the general position, there is scant evidence one way or the other. Legislators are materially more adept at passing new regulatory laws than they are at collecting empirical data on its practical impact and evaluating its consequences for businesses, consumers and the wider public.

It is true to say that ten years on from the crash financial services remains the Island's biggest employer, accounting directly for more than one-in-five jobs. However, it would be taking a particularly optimistic and charitable view of regulation to say that this sustained success was a direct result of the positive effects of regulation. And, indeed, some may well argue the contrary position and say that regulation has been wholly negative and that the employment figures are despite the regulation and would be even higher were it not for the dampening effects of increased regulation and greater compliance burden.

Whichever stance you take on that point, one issue is beyond doubt – irrespective of the greatly increased level of regulation we have seen in the past decade (whether introduced as a consequence of the financial crisis or to address other issues), financial services business in Guernsey has remained remarkably robust and has increased in scale to a material degree. This was underscored by the higher than expected GDP figures announced for Guernsey this year.

And this is reflected in our own business. Our Guernsey office is materially larger and busier now than it was a decade ago. An increasing proportion of our work is devoted to advising on regulatory matters. This work goes far beyond what one would traditionally think of as the

regulated sector (such as funds, banking and insurance). The need to consider and advise upon regulatory and compliance issues arises in a huge variety of transactions – such as corporate M&A matters where regulatory reviews are now a large and important element of the due diligence process.

Yes, the greater regulation is challenging. But in our experience it also presents a real opportunity – principally for those advisors who are able to address the complexity and explain it in clear and straightforward terms to their clients and for those who are able to implement and comply with the new regimes in ways that are practical and pragmatic and which disrupt as little as possible their clients' objectives.

The increased level of regulation we see has made the business of financial services in Guernsey materially more complex and challenging in the past decade, but there is no sign of it ending that business any time soon.

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