

Private Client 2021

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Bermuda

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TAX

Residence and domicile

1 | How does an individual become taxable in your jurisdiction?

There is no income or capital gains tax levied in Bermuda. Domicile and residence are only relevant to taxation with respect to Bermudian dollar-denominated or Bermuda-situate assets. Tax liability can arise as a result of employment (payroll tax) or land ownership in Bermuda (land tax and stamp duty).

Income

2 | What, if any, taxes apply to an individual's income?

Bermuda does not impose income tax.

The Payroll Tax Act 1995 and the Payroll Tax Rates Act 1995 imposes payroll tax, which is charged quarterly on remuneration paid, given or assessed to every employee and deemed employee by every employer and self-employed person in Bermuda, and includes cash and any benefit (including pension contributions, stock options, housing allowance and profit sharing). The maximum bracket is 10.25 per cent, applicable to taxpayers with an annual payroll greater than B\$1 million and exempt undertakings. The employer is allowed to withhold the following percentages from the remuneration paid to an employee for the year April 2020 through March 2021:

- in respect of employees earning less than B\$48,000 per annum: 2 per cent;
- in respect of employees earning up to B\$96,000 per annum: 8.5 per cent
- in respect of employees earning up to B\$235,000 per annum: 9 per cent and
- in respect of employees earning over B\$235,000 per annum: 9.5 per cent.

Capital gains

3 | What, if any, taxes apply to an individual's capital gains?

There is no capital gains tax in Bermuda.

Lifetime gifts

4 | What, if any, taxes apply if an individual makes lifetime gifts?

The form of tax applicable to lifetime gifts is stamp duty charged on the instrument of conveyance. Subject to exceptions, ad valorem stamp duty is charged on instruments that effect gifts of 'Bermuda property' (that is, essentially Bermuda dollar-denominated or Bermuda-situate assets). The stamp duty is ordinarily payable within 30 days of the date of execution of the instrument.

The exemptions include, for example, instruments effecting gifts of real or personal property to certain charities and non-profit organisations, conveyances chargeable to duty as a settlement under the Stamp Duties Act 1976).

The applicable rates of duty under the Stamp Duties Act 1976 are:

- 2 per cent on the first B\$100,000 of value of the gift;
- 3 per cent on the next B\$400,000;
- 4 per cent on the next B\$500,000;
- 6 per cent on the next B\$500,000; and
- 7 per cent on any value in excess of B\$1.5 million.

Subject to exemptions, instruments effecting voluntary dispositions of non-Bermudian property are subject to ad valorem duty of 1 per cent of the amount or value transferred. Exemptions include where a 'international business' (as defined in the Stamp Duties (International Business) Relief Act 1990) or a 'local trustee' (as defined in the Stamp Duties Act 1976) are properly party to the instrument.

There is no exemption for instruments effecting lifetime gifts between spouses, but lower rates of stamp duty apply to instruments effecting lifetime gifts than on affidavits of value required in support of applications for probate or letters of administration.

Inheritance

5 | What, if any, taxes apply to an individual's transfers on death and to his or her estate following death?

In Bermuda, there is no direct tax on inheritance. However, stamp duty is assessable on the affidavit of value that supports an application to the Supreme Court for a grant of probate or letters of administration. Stamp duty on the affidavit of value is calculated by reference to the value of the deceased's 'Bermuda property', irrespective of the deceased's nationality, residence or domicile, if an application in Bermuda for a grant of probate or letters of administration in the deceased's estate is required. The stamp duty rates applicable on affidavits of value are as follows:

- up to B\$100,000 in value of the Bermuda property forming part of the deceased estate: nil;
- over B\$100,000 to B\$200,000: 5 per cent;
- over B\$200,000 to B\$1 million: 10 per cent;
- over B\$1 million to B\$2 million: 15 per cent; and
- over B\$2 million: 20 per cent.

In addition to the exemption in relation to Bermuda property, stamp duty on the affidavit of value is not assessed on the value of the following classes of assets passing on death:

- bequests to surviving spouses;
- bequests to registered charities (registered as charities under the Charities Act 2014) or to such other bodies or organisations that the Minister of Finance determines to be charitable; and

- the value of a deceased's interest in Bermuda real estate that was designated exempt from stamp duty under section 47A of the Stamp Duties Act 1976 (the 'family homestead' designation).

Real property

6 | What, if any, taxes apply to an individual's real property?

There are no taxes assessed on capital gains on real estate owned by individuals. Stamp duty is charged on deeds of voluntary conveyance or conveyance on sale. In addition, there

is a land tax, which is assessed on Bermuda real estate twice a year. The notional annual rental value (ARV) of each property (if let unfurnished on the open market) is determined by the Land Valuation Department of the Bermuda Government and dictates the applicable tax rate.

The following land tax rates presently apply:

- For properties of ARV B\$1-B\$22,000 the land tax is B\$300
- For properties with ARV over B\$22,000 is B\$300 plus:
- on the first B\$1-B\$11,000 of ARV, .80 per cent of ARV;
- on the next B\$11,001 – B\$22,000 of ARV, 1.80 per cent;
- on the next B\$22,001 – B\$33,000 of ARV, 3.5 per cent;
- on the next B\$33,001-B\$44,000 of ARV, 6.5 per cent;
- on the next B\$44,001 – B\$90,000 of ARV, 17.00 per cent;
- on the next B\$90,001 – B\$120,000 of ARV, 30 per cent; and
- on the next B\$120,001 of ARV and over, 50 per cent.

Non-cash assets

7 | What, if any, taxes apply on the import or export, for personal use and enjoyment, of assets other than cash by an individual to your jurisdiction?

Pursuant to the Customs Tariff Act 1970, customs duties are levied on the importation of goods to Bermuda at a rate of 25 per cent subject to limited duty-free allowances. There is no export tax.

Other taxes

8 | What, if any, other taxes may be particularly relevant to an individual?

There is no VAT, wealth or sales tax applicable to individuals in Bermuda.

Trusts and other holding vehicles

9 | What, if any, taxes apply to trusts or other asset-holding vehicles in your jurisdiction, and how are such taxes imposed?

Subject to certain exemptions outlined below, the Stamp Duties Act 1976 imposes stamp duty on instruments effecting settlements of Bermuda property of B\$250 plus:

- up to B\$50,000 of value of the Bermuda property settled is exempt from duty, and thereafter
- the next B\$150,000 of value is charged at 5 per cent;
- the next B\$800,000 at 10 per cent, and
- any value in excess thereof at 15 per cent.

Trustees are required to execute 'instruments of addition' to recognise an addition of corpus to a settlement.

Subject to the exemptions, instruments of addition recognising additions of Bermuda property to the corpus of a settlement are subject to ad valorem stamp duty at the following rates:

up to the point at which the total amount of any duty paid on the instrument of addition Bermuda property by way of instrument of addition equals B\$7,750 in total, at the rate of 5 per cent;

- the next B\$500,000 in value added is charged at the rate of 10 per cent; and
- any value added in excess thereof at 15 per cent.

Subject to the exemptions, instruments of addition in respect of additions of non-Bermuda property are subject to duty at the rate of 0.1 per cent of the value of non-Bermuda property added up until the point that as duty amounting in the aggregate of B\$7,500 has been paid on instruments of settlement and addition in relation to that settlement.

The exemptions from duty include instruments settling or adding property to a settlement:

- that is a Bermuda registered charity;
- in favour of charitable purposes that Bermuda's Minister of Finance determines warrant an exemption from duty by reason of their connection with Bermuda (as mentioned in the instrument) and their benefit to Bermuda;
- where the instrument settles or adds to a settlement non-Bermuda property and the trustees of the settlement are 'local trustees', or an 'international business' or the trust is a 'pension trust' as defined in the Stamp Duties Act 1976; and
- that is a Bermuda registered pension fund, to the extent the instrument does not dispose of land in Bermuda.

Subject to certain exemptions, a nominal stamp duty apply to certain supplemental trust instruments (such as deeds of appointment).

In Bermuda, with the exception of stamp duty noted above, there are no taxes on income, profits dividends, capital gains earned, received or derived by trusts.

There are no corporate taxes in Bermuda other than annual government fees which apply to all companies based on their level of 'assessable capital'.

An 'exempted undertaking' (being any one of an exempted company, permit company, exempted partnership or exempted unit trust scheme, as defined by the Exempted Undertaking Tax Protection Act

1966) may apply to the Minister of Finance for an assurance that, in the event of there being enacted in Bermuda any legislation imposing tax computed on profits or income, any capital asset, gain or appreciation, or any tax in the nature of estate duty or inheritance tax, that the imposition of any such tax will not be applicable to the exempted undertaking, or to any of its operations or the shares, debentures or other obligations of the undertaking. However, such an assurance will not prevent the application of any such tax to persons ordinarily resident in Bermuda or in respect of land leased to the relevant undertaking. At the present time, a tax assurance certificate is effective until 31 March 2035.

Charities

10 | How are charities taxed in your jurisdiction?

Bermuda registered charities are not taxed in Bermuda. Gifts of property to Bermuda registered charities do not attract any tax liability.

Anti-avoidance and anti-abuse provisions

11 | What anti-avoidance and anti-abuse tax provisions apply in the context of private client wealth management?

Because Bermuda does not impose any income, capital gains or estate taxes, there are no anti-avoidance provisions in Bermuda. Bermuda is, however, subject to various regulatory regimes and multinational agreements that aim to prevent multinational tax avoidance and evasion (such as US Foreign Account Tax Compliance Act (FATCA) and the Common Reporting Standard (CRS)).

Economic substance legislation has also recently come into force, requiring certain entities that are registered and tax resident in Bermuda and are carrying on 'relevant activities' to report on and satisfy the economic substance requirements as prescribed in the legislation. Many private wealth structures may not be subject to economic substance requirements as entities within these structures would typically not be carrying on any of the relevant activities, or, if they do, the relevant entity will often be subject to reduced requirements, which can be satisfied through the maintenance of a registered office and the completion of mandatory filings.

TRUSTS AND FOUNDATIONS

Trusts

12 | Does your jurisdiction recognise trusts?

Trusts are recognised in Bermuda. The governing legislation is the Trustee Act 1975, which is largely based on English law and the Trusts (Special Provisions) Act 1989 (the TSPA). Further to the UK Recognition of Trusts Act 1987 (Overseas Territories) Order 1989, trusts from other common law jurisdictions and certain types of similar concepts that apply in civil law jurisdictions are recognised in Bermuda.

The term 'trust' is defined in the TSPA as the legal relationship created inter vivos or on death, by a 'settlor' when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose. The TSPA stipulates that a trust has the following characteristics:

- the assets constitute a separate fund and are not a part of the trustee's own estate;
- title to the trust property is registered in the name of the trustee or in the name of another person on behalf of the trustee; and
- the trustee has the power and the duty in respect of which he or she is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him or her by law.

The TSPA allows for the creation of non-charitable purpose trusts, where the purposes for which the trust are created are sufficient certain to allow the trust to be carried out, lawful and not contrary to public policy.

The TSPA provides for the reservation by the settlor for himself or herself, or the grant to any other person in a trust instrument of any limited beneficial interest in trust property or any of the powers listed in the TSPA, which include, but are not limited to, the power to:

- revoke, vary or amend the trust;
- direct the appointment of trust property;
- give directions;
- restrict the exercise of powers by the trustee;
- appoint trustees, a protector or enforcer; and
- add or remove from the class of beneficiaries.

The TSPA provides that such powers reserved to the settlor will not invalidate the trust, prevent the trust taking effect according to its terms or cause any or all of the trust property to form part of the estate of the settlor for probate purposes. A trustee who has acted, or refrained from acting, in compliance with, or as a result of, an exercise of such powers shall not by reason of such compliance commit a breach of trust, or breach of an equitable or fiduciary duty. The TSPA pertains to trusts created before or after its commencement date.

Section 47A of the TSPA provides that where the Court is satisfied in relation to the exercise of a fiduciary power that certain conditions are met, the court may set aside the exercise of the power and make such consequential orders as it sees fit. The requisite conditions are that the person who holds the power did not take into account one or more

considerations (whether of fact or law or both) that were relevant to the exercise of the power, or took into account considerations that were irrelevant to the exercise of the power and but for that, would not have exercised the power, or would have exercised the power on a different occasion, or in a different manner. The TSPA thereby preserves the rule in *Re Hastings-Bass*; *Hastings v Inland Revenue* [1975] EWCA Civ 13 as it was applied before the 2013 decision of the UK Supreme Court in *Pitt v Holt* and *Futter v Futter* [2013] UKSC 26.

Bermuda trusts may be discretionary, fixed charitable or established for non-charitable purposes and resulting, implied and constructive trusts are recognised. There is no register of trusts in Bermuda.

The Perpetuities and Accumulations Act 2009 abolished the rule against perpetuities with respect to trusts created after 1 August 2009, except in respect of interests in Bermuda land. In relation to a trust created before 1 August 2009 and that does not hold Bermuda land, application may be made to the Supreme Court under a streamlined procedure for an order declaring that the rule against perpetuities shall not apply to such trust.

Private foundations

13 | Does your jurisdiction recognise private foundations?

There is no foundations law in Bermuda. However, the concept of a foundation, in the wide context of a charitable or philanthropic entity backed by endowments, is recognised but dealt with through the use of trusts and companies limited by guarantee.

SAME-SEX MARRIAGES AND CIVIL UNIONS

Same-sex relationships

14 | Does your jurisdiction have any form of legally recognised same-sex relationship?

Same-sex relationships are permitted under Bermuda law. The Domestic Partnership Act 2018 (DPA). The DPA permits any couple (heterosexual or homosexual) to enter into a domestic partnership and gives same-sex couples rights equivalent to those enjoyed by heterosexual married couples.

The rights now guaranteed under the DPA include: the right to inherit in the case of no will, the right to a partner's pension or pensions, access to property rights, the right to make medical decisions on behalf of one's partner and the right to live and work in Bermuda as the domestic partner of a Bermudian.

Heterosexual civil unions

15 | Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?

The Domestic Partnership Act 2018 (DPA). The DPA permits any couple (heterosexual or homosexual) to enter into a domestic partnership and gives same-sex couples rights equivalent to those enjoyed by heterosexual married couples.

The rights now guaranteed under the DPA include: the right to inherit in the case of no will, the right to a partner's pension or pensions, access to property rights, the right to make medical decisions on behalf of one's partner and the right to live and work in Bermuda as the domestic partner of a Bermudian.

SUCCESSION

Estate constitution

16 | What property constitutes an individual's estate for succession purposes?

All property, whether owned under law or equity, constitutes an individual's estate for succession purposes under Bermuda law. Certain assets, such as real property held on joint tenancy, do not pass to an individual's estate, but rather transfer to the joint surviving owner upon death.

In this regard Bermuda law follows English law, with two types of co-ownership:

- Joint tenancy: the co-owners hold an indivisible share of the property. On the death of a joint tenant, the property vests in the surviving joint tenant or tenants by operation of law and does not form part of his or her estate on death.
- Tenancy-in-common: the co-owners own a separate and identifiable share in the property and on death, the share of the property forms part of the deceased co-owner's estate (and passes under the terms of his or her will or by intestacy rules).

If the deceased joint owner leaves other solely owned assets within his or her estate, a grant of probate or letters of administration will be required in order to pass title to the beneficiaries. In such a case, the extent of any property owned in joint tenancy must be disclosed in the application for the grant or letters of administration and the market value of such assets at the date of the deceased joint owner's death, divided by the number of joint owners, will be assessed to stamp duty subject to certain exemptions (including where the deceased's surviving spouse is the joint tenant).

Disposition

17 | To what extent do individuals have freedom of disposition over their estate during their lifetime?

There are no restrictions on lifetime giving. Bermuda does not have any community property (marital property) regime, forced heirship regime or similar which might restrict an individual's lifetime dispositions.

18 | To what extent do individuals have freedom of disposition over their estate on death?

There are no forced heirship rules in Bermuda. Individuals have freedom of disposition over their real and personal property, although there is no requirement to have a will. In the absence of a will, the rules governing intestacy set down in the Succession Act 1974 will apply. It is possible in certain circumstances for family members to bring a claim for financial provision out of a deceased's estate under Part III of the Succession Act 1974.

Intestacy

19 | If an individual dies in your jurisdiction without leaving valid instructions for the disposition of the estate, to whom does the estate pass and in what shares?

Matters of succession on intestacy are governed by the Non-Contentious Probate Rules 1974 and the Succession Act 1974. The Non-Contentious Probate Rules 1974 establish the order of priority for taking a grant of letters of administration without a will and with the will annexed. In the case of intestacy, the order of priority is the surviving spouse, then the children of the deceased or the issue of a child of the deceased who has died during the deceased's lifetime, followed by parents, through brothers and sisters, nieces and nephews, grandparents and so on.

The Succession Act 1974 establishes the priority as to beneficial interests in a deceased's estate. If the intestate leaves only a spouse, the spouse takes the residuary estate absolutely, and if the deceased leaves only issue, the issue will take per stirpes. If the intestate leaves a spouse and issue, the spouse will take the personal chattels absolutely, and, in addition, a sum equal to 50 per cent of the value of the residuary estate or B\$100,000, whichever is greater, and the balance of the residuary estate will be held for the deceased's issue per stirpes. It should be noted that in a situation where the deceased leaves a spouse and any one or more of a parent, brother or sister of the whole blood, or issue of a brother or sister of the whole blood, but no issue, the surviving spouse will take the personal chattels and a sum equal to 66.66 per cent of the value of the residuary estate or B\$150,000, whichever is the greater, and the parents or siblings, or siblings' children, as the case may be, will share the balance. In the absence of a spouse or issue the order of priority is parents, siblings (whole blood or their issue, then half blood or their issue), grandparents, uncles and aunts (whole blood or their issue, then half blood or their issue), failing which, the crown.

Adopted and illegitimate children

20 | In relation to the disposition of an individual's estate, are adopted or illegitimate children treated the same as natural legitimate children and, if not, how may they inherit?

Yes. Following recent amendments to the Children Act 1998 and the TSPA, unless a contrary intention appears in the trust instrument, a child of a person includes a person's legitimate, adopted and illegitimate children.

Distribution

21 | What law governs the distribution of an individual's estate and does this depend on the type of property within it?

Where there is a valid will in existence, it will be governed by the Wills Act 1988. In the absence of a will, assets located in Bermuda will pass according to the provisions of the Succession Act 1974. Conflicts of laws principles will apply in the case of immovable property.

Formalities

22 | What formalities are required for an individual to make a valid will in your jurisdiction?

In Bermuda, the formalities for making a will are:

- the testator must be aged 18 or older;
- the testator must be of sound disposing mind, that is, have the requisite testamentary capacity, which is the ability to:
 - identify those persons he or she should consider when disposing of his or her estate;
 - understand the nature of his or her act (when executing the will); and
 - understand the extent of his or her estate;
- the will must be in writing;
- the testator must sign his or her will (or make his or her mark on the will, if he or she is illiterate) in the presence of two independent witnesses;
- the independent witnesses must be 18 or older and be of sound mind; and
- the independent witnesses must see the testator sign and then sign the will themselves in the presence of the testator.

The will should not be witnessed by persons named in the will as beneficiaries or the spouses of those persons. If this occurs, the will, in the absence of any other defect in execution, will remain valid but the gift to

the beneficiary who witnessed the will, or whose spouse witnessed the will, will be held void.

A holographic will, namely one written entirely in the testator's own handwriting (to be proved on oath by at least two persons well acquainted with his or her handwriting) and signed by him or her at the end, is valid under Bermuda law, if there is compliance with the relevant provisions of the Wills Act. However, holograph wills are not recommended, as the complexities of drafting a comprehensive and effective will and ensuring its proper execution are not widely appreciated and it can be difficult to obtain affidavit in evidence as to handwriting after the passage of time. This can lead to a will being declared invalid and the unforeseen consequences resulting from intestacy.

Foreign wills

23 | Are foreign wills recognised in your jurisdiction and how is this achieved?

The Wills Act 1988 provides that a will is to be treated as properly executed in Bermuda if it has been executed in accordance with the laws of the jurisdiction where either:

- it was executed; or
- at the time of its execution, or of the testator's death, the testator was either:
 - domiciled or had his or her habitual residence; or
 - was a national.

Construction of a will is not altered by reason of any change in the testator's domicile after execution of the will. Additionally, the Wills Act provides that the will is validly executed:

- if executed on board a vessel or aircraft, the will conforms to the laws of the territory of registration or close connection of that vessel or aircraft;
- to the extent that it disposes of immovable property, its execution complies with the laws where the immovable property is situated; or
- so far as a will exercises a power of appointment, if the execution of the will conforms to the law governing the essential validity of the power of appointment.

A foreign will must be admitted to probate, or resealed, in Bermuda in order to allow for access to the deceased's property in Bermuda.

Administration

24 | Who has the right to administer an estate?

The estate representatives have the right to administer an estate. Where the executors are named in a will and any one or more of them obtains a grant of probate, the executors named in the grant will be the estate representatives. However, it is not a requirement that all named executors take a grant. An executor may renounce or choose to have power reserved to him or her. The rules contained in the Non-Contentious

Probate Rules 1974 will determine, in order of priority, who may apply for a grant of letters of administration (with or without will annexed) if:

- there is no valid will;
- if a will exists but no executors are named; or
- the named executors fail or refuse to act.

25 | How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

In Bermuda, the deceased's estate vests automatically in his or her executors (if any). They are able to pass good title to certain estate assets immediately, but they cannot pass title to real estate until their authority is confirmed by the issue of a grant of probate. For intestate estates, the estate vests in the Registrar of the Supreme Court of Bermuda until the issuance of a grant of letters of administration, at which time title automatically transfers to and vests in the estate representatives.

The procedure to be followed and documents required to make application for a grant of probate or letters of administration are set out in the Non-Contentious Probate Rules 1974. The Administration of Estates Act 1974 governs the administration of a deceased's estate.

Challenge

26 | Is there a procedure for disappointed heirs and/or beneficiaries to make a claim against an estate?

The beneficiaries of a deceased's estate may challenge the interpretation of a clause or clauses in a will where there is ambiguity, or on the basis of want of due execution of the will, want of sound disposing mind or want of knowledge and approval on the part of the testator. Claims of fraud and undue influence can also be raised. Beneficiaries may also challenge the estate representatives on the basis of devastavit or breach of trust.

Under the Succession Act 1974, the dispositive provisions of a will (or the intestacy trusts) can also be challenged by the following individuals on the grounds that the will or intestacy trusts do not provide reasonable financial provision for the beneficiary bringing the challenge:

- a spouse;
- a former spouse who has not remarried;
- children; and
- grandchildren, provided they were being maintained by the deceased.

Applications pursuant to the Succession Act 1974 for reasonable financial provision must be commenced in the Supreme Court within six months from the date when a grant of representation is first taken out, although leave of the Court can be sought for an application to be commenced out of time.

If an appropriately drafted and enforceable forfeiture provision is contained in a will, then a beneficiary may risk forfeiture of his benefit in challenging it. A 2014 Bermuda Supreme Court decision upheld the long-standing legal rule against the *in terrorem* use of a forfeiture condition. In that case, the forfeiture provision included in the will under review by the Bermuda court was held to be invalid in the absence of a gift over provision.

CAPACITY AND POWER OF ATTORNEY

Minors

27 | What are the rules for holding and managing the property of a minor in your jurisdiction?

Title to real estate in Bermuda cannot legally be held by a minor. Therefore, property may be held in trust for a minor and applied for his or her benefit and may be paid to his or her parent or guardian or to the minor directly once he or she has reached the age of 18. The trustee is sufficiently discharged by the receipt of the parent or guardian of the minor and is not required to attend to the further application of the relevant property.

Age of majority

28 | At what age does an individual attain legal capacity for the purposes of holding and managing property in your jurisdiction?

An individual attains legal capacity (ie, ceasing being a minor) upon reaching age 18.

Loss of capacity

29 | If someone loses capacity to manage their affairs in your jurisdiction, what is the procedure for managing them on their behalf?

An individual may grant another a power of attorney (POA) but must have the requisite legal capacity at the time of execution for the POA to be valid. POAs can be limited in scope (for example, signing a conveyance on behalf of a party who will be abroad and unable to sign it when required) or extensive in scope, authorising the attorney to manage the property and affairs of the donor of the POA. If made in contemplation of subsequent legal incapacity, as defined in the Powers of Attorney Act 1944 (an enduring power of attorney (EPOA)), the EPOA will not be invalidated by the onset of legal incapacity.

Where a person has lost legal capacity without an EPOA, an interested person, supported by personal and medical affidavit evidence, may apply to the Supreme Court of Bermuda for a receivership order under the Mental Health Act 1986 to manage that person's property and affairs. Once appointed, the receiver must file annual accounts with the Court, setting out the income and expenses of the 'patient' and the extent of the patient's remaining property. Significant actions proposed to be taken in relation to the patient's property or affairs (for example, the sale of real estate) are subject to Court approval.

An EPOA is generally preferable to receivership, provided a suitable party is available to act as attorney, as the process to obtain receivership can be time consuming and expensive. However, the granting of an EPOA is not without risk and attorneys must, therefore, be selected with care.

IMMIGRATION

Visitors' visas

30 | Do foreign nationals require a visa to visit your jurisdiction?

Entry visas and visa waivers are no longer required for tourist and business visitors and persons entering Bermuda on a work permit. All persons entering Bermuda must be in possession of a passport valid for 45 days past the expiration of travel or a work permit and persons requiring a multi-entry visa must present it upon arrival and it must also be valid for 45 days past the expiration of travel or work permit. It is possible for a tourist to visit Bermuda with a return or onward ticket for up to 90 days, but this period may be extended for a further 90 days.

A non-Bermudian may reside and work in Bermuda provided he or she holds a valid work permit. As a result of 2015 policy changes, several new categories of work permit have been introduced, including the global work permit, whereby an employee of a global company transferring to Bermuda may be granted permission to work in Bermuda; and the new business work permit, whereby a newly established business may be granted automatic approval for a limited number of permits within the first six months of operation. Both categories of permit may be granted for periods of one to five years. There is also a category of global entrepreneur work permit, which may be issued for a period of one year for someone seeking to carry out feasibility studies related to establishing an exempted business in Bermuda. A standard work permit may be issued for a period of one to five years and may be applied for

on exhaustion of the period of any of the foregoing permit types. There is also a short-term permit available for certain categories of persons, such as athletes and entertainers, employed for periods not exceeding six months. A periodic permit may be applied for in the case of persons conducting repeat business visits to Bermuda of less than 30 days, for example, travelling salespersons or service providers.

A non-Bermudian may apply for a residential certificate provided he or she is over 18 years of age, is of good character and conduct, possesses valid health insurance coverage, is free of tuberculosis and is able to provide evidence of sufficient financial means or a continuous source of annual income without the need to seek employment. It is possible for the spouse or partner and any dependent children of the holder of a residential certificate to obtain residential certificates if they are sponsored by the certificate holder and they meet the requirements of good character, good health and adequate health insurance.

With the advent of the covid-19 pandemic, the Bermuda Government has introduced the concept of a fast-tracked Work from Bermuda Certificate, which enables a person who demonstrates employment with a legitimate company which is registered and operating outside Bermuda to reside in Bermuda for one year and work remotely. The applicant must also possess valid health insurance and have substantial means or have a continuous source of annual income. The Certificate is renewable.

31 | How long can a foreign national spend in your jurisdiction on a visitors' visa?

Entry visas and visa waivers are no longer required for tourist and business visitors and persons entering Bermuda on a work permit. All persons entering Bermuda must be in possession of a passport valid for 45 days past the expiration of travel or a work permit and persons requiring a multi-entry visa must present it upon arrival and it must also be valid for 45 days past the expiration of travel or work permit. It is possible for a tourist to visit Bermuda with a return or onward ticket for up to 90 days, but this period may be extended for a further 90 days.

A non-Bermudian may reside and work in Bermuda provided he or she holds a valid work permit. As a result of 2015 policy changes, several new categories of work permit have been introduced, including the global work permit, whereby an employee of a global company transferring to Bermuda may be granted permission to work in Bermuda; and the new business work permit, whereby a newly established business may be granted automatic approval for a limited number of permits within the first six months of operation. Both categories of permit may be granted for periods of one to five years. There is also a category of global entrepreneur work permit, which may be issued for a period of one year for someone seeking to carry out feasibility studies related to establishing an exempted business in Bermuda. A standard work permit may be issued for a period of one to five years and may be applied for on exhaustion of the period of any of the foregoing permit types. There is also a short-term permit available for certain categories of persons, such as athletes and entertainers, employed for periods not exceeding six months. A periodic permit may be applied for in the case of persons conducting repeat business visits to Bermuda of less than 30 days, for example, travelling salespersons or service providers.

A non-Bermudian may apply for a residential certificate provided he or she is over 18 years of age, is of good character and conduct, possesses valid health insurance coverage, is free of tuberculosis and is able to provide evidence of sufficient financial means or a continuous source of annual income without the need to seek employment. It is possible for the spouse or partner and any dependent children of the holder of a residential certificate to obtain residential certificates if they are sponsored by the certificate holder and they meet the requirements of good character, good health and adequate health insurance.

With the advent of the covid-19 pandemic, the Bermuda Government has introduced the concept of a fast-tracked Work from Bermuda Certificate, which enables a person who demonstrates employment with a legitimate company which is registered and operating outside Bermuda to reside in Bermuda for one year and work remotely. The applicant must also possess valid health insurance and have substantial means or have a continuous source of annual income. The Certificate is renewable.

High net worth individuals

32 | Is there a visa programme targeted specifically at high net worth individuals?

There is no programme targeted at high net worth individuals.

33 | If so, does this programme entitle individuals to bring their family members with them? Give details.

Not applicable.

34 | Does such a programme give an individual a right to reside permanently or indefinitely in your jurisdiction and, if so, how?

Not applicable.

35 | Does such a programme enable an individual to obtain citizenship or nationality in your jurisdiction and, if so, how?

Not applicable.

UPDATE & TRENDS

Key developments

36 | Are there any proposals in your jurisdiction for new legislation or regulation, or to revise existing legislation or regulation, in areas of law relevant to high-net worth individuals, particularly those coming to or investing in your jurisdiction? Are there any other current developments or trends relevant to such individuals that should be noted?

In August 2020, Bermuda enacted amendments to the TSPA and the Children Act 1998 that are material for those wishing to establish trusts governed by Bermuda law. These are as follows.

The simplification and enhancement of Bermuda's 'firewall legislation' in the TSPA. Bermuda's firewall legislation helps protect property in trusts governed by Bermuda law against claims based on (1) forced heirship, community property and certain other rights that may be granted to persons under laws of other jurisdictions and (2) enforcement of foreign orders based on such claims, by modifying Bermuda's choice of law rules to require that Bermuda law be applied to certain key questions in respect of the formation, transfers of property into and administration of Bermuda law trusts. The simplification and enhancement of Bermuda's firewall legislation has primarily been achieved by varying the structure to now specify the circumstances under which foreign law shall be excluded from application to a Bermuda law trust and then extending specific exclusions of the application of foreign laws that conflict with Bermuda's public policy.

The ability to in a trust instrument made under the TSPA expressly provide that provisions in the Children Act 1998 preventing the distinction between illegitimate and adopted or illegitimate children, or both, shall not apply to the construction of the trust instrument. Prior to this amendment any distinction in an instrument or disposition of property

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made on or after 19 January 2004 between the status of adopted children and illegitimate children with children born inside marriage was abolished. Consequently, the use of the word 'children' (and corresponding terms such as 'issue' and 'descendants') to describe a class of beneficiaries in a Bermuda law trust instrument made on or after 19 January 2004 would, by operation of the Children Act 1998, include illegitimate and adopted children notwithstanding that the trust instrument might provide that such persons were not intended to be included within the beneficial class. While there may have been ways for a draftsman to avoid this outcome, the prescriptive provisions may have reduced the flexibility of a draftsman to achieve the settlor's objectives and the amendment to the TSPA and the Children Act to achieve this is welcomed by settlors wishing to establish Bermuda law trusts.

Coronavirus

37 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

Various initiatives have been employed by Bermuda's government to require testing and periods of quarantine for those travelling (including returning) to Bermuda. At certain times measures have been employed to restrict certain activities and numbers of people attending gatherings. Social distancing and the wearing of masks continues to be required in restaurants and other public places. Bermuda is fortunate to have experienced a relatively low number of identified cases and deaths from the pandemic relative to its population and has contributed to Bermuda being an attractive jurisdiction for those from other jurisdictions who are able to work remotely from Bermuda. Bermuda has introduced a fast-tracked residential certificate to facilitate those from outside Bermuda who wish to work remotely while in Bermuda.