



**COUNTRY  
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# The Legal 500 Country Comparative Guides

## Guernsey

# PRIVATE CLIENT

### Contributor

Carey Olsen



#### Natasha Kapp

Partner, Private Client and Trusts, Guernsey | [natasha.kapp@careyolsen.com](mailto:natasha.kapp@careyolsen.com)

#### Russell Clark

Partner, Head of Private Client and Trusts, Guernsey | [russell.clark@careyolsen.com](mailto:russell.clark@careyolsen.com)

#### Laila Arstall

Counsel, Private Client and Trusts, Guernsey | [laila.arstall@careyolsen.com](mailto:laila.arstall@careyolsen.com)

#### Patricia Montgomery

Counsel, Private Client and Trusts, Guernsey | [patricia.montgomery@careyolsen.com](mailto:patricia.montgomery@careyolsen.com)

This country-specific Q&A provides an overview of private client laws and regulations applicable in Guernsey.

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## GUERNSEY PRIVATE CLIENT



### 1. Which factors bring an individual within the scope of tax on income and capital gains?

Liability to Guernsey income tax is generally dependent on residential status. However, certain other types of income arising, or from a source, in Guernsey can give rise to a liability to Guernsey income tax irrespective of the residence status of the recipient.

Guernsey does not levy taxes upon capital gains (unless the varying of investments and the turning of such investments to account is a business or part of a business).

### 2. What are the taxes and rates of tax to which an individual is subject in respect of income and capital gains and, in relation to those taxes, when does the tax year start and end, and when must tax returns be submitted and tax paid?

The rate of income tax for individuals is 20%. The tax year is the same as the calendar year, 1st January to 31st December. Generally, tax returns must be submitted by the following 30 November, however, the deadline for submitting the calendar year 2021 return is 28 February 2023. Guernsey does not levy capital taxes.

### 3. Are withholding taxes relevant to individuals and, if so, how, in what circumstances and at what rates do they apply?

Withholding obligations arise in limited circumstances. These include withholding obligations arising on the part of a payee of specific types of income. For example, in the case of employment income, withholding is achieved through the Employees Tax Instalment scheme (similar to PAYE in the UK). Withholding also arises on the payment of distributions by companies to Guernsey

resident beneficial members (as defined in the Income Tax (Guernsey) Law, 1975 as amended (“ITL”)); the making of upstream loans by companies to participators (as defined in the ITL) and the payment of rent on Guernsey situs real property. The obligation to deduct and withhold tax from payments under section 48 ITL arises in relation to payments by “agents” (defined in that section) to non-residents, but only if the non-resident is liable to Guernsey income tax on that payment. Section 48 defines an “agent” to include any person receiving or paying income on behalf of or to a non-resident, whether directly or indirectly through intermediaries or other third parties for onward transmission to the non-resident.

Section 48 (7) ITL expressly provides that an agent is not chargeable to tax, and tax is not deductible by an agent, in respect of disregarded income within the meaning of section 47D (for non-resident individuals) or 47I (for non-resident companies). There are 9 listed types of income which are designated as disregarded income under section 47. This list includes income consisting of interest and distributions. Accordingly, applying section 47 and 48, there is no obligation on an agent to deduct or withhold tax from payments of interest, dividends and income of a similar nature due to a non-resident, unless the provisos of section 47D(3) or 47I(3) apply. These provisos apply where the non-resident recipient of the income carries on business in Guernsey through a permanent establishment in Guernsey and the income forms part of the profits of such business.

### 4. How does the jurisdiction approach the elimination of double taxation for individuals who would otherwise be taxed in the jurisdiction and in another jurisdiction?

Agreements for the avoidance of double taxation have been signed with a number of territories. These agreements generally mean that (where a comprehensive double tax agreement is in force) income tax payable in the other territory, whether directly or by

deduction, in respect of income from sources within that territory, may be allowed as a credit against any Guernsey income tax payable in respect of that income. However, there are exceptions to this rule. In addition, if you are resident in Guernsey and have income which is subject to tax in other countries (i.e. other than those with which Guernsey has a double tax agreement you can claim relief from tax in Guernsey; the amount will, in most cases, be three-quarters of the effective rate of Guernsey tax. If the overseas effective rate is less than three-quarters of the Guernsey effective rate, relief will be given at the overseas rate.

Guernsey joined the BEPS Inclusive Framework in June 2016, and in October 2016 signed the country-by-country reporting Multilateral Competent Authorities Agreement, which provides for the automatic exchange of information. The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting entered into force for Guernsey (subject to Guernsey's list of reservations and notifications) on 1 June 2019.

Present indications are that due to the current revenue threshold level involved, only a handful of Guernsey entities are impacted by the introduction of country by country reporting. Where reporting obligations arise, this is done through Guernsey's online platform for tax related reporting, The Information Gateway Online Reporter (IGOR).

Action 5 of the BEPS initiative covers the measures intended to be put in place to counter harmful tax practices more effectively, taking into account transparency and substance. Within Action 5 is the Chapter 5 requirement to introduce a framework for compulsory spontaneous exchange of information in respect of tax rulings (where the overriding rationale is that spontaneous exchange should occur where information obtained by one jurisdiction will be of interest to another jurisdiction - i.e. the ruling has a cross-border flavour). The Director of the Revenue Service is required to exchange details of tax rulings under the framework in accordance with a set timeframe. Future requests for rulings, which fall within BEPS Action 5, are to be submitted electronically in order to facilitate the efficient operation of the reporting process.

### **5. Is there a wealth tax and, if so, which factors bring an individual within the scope of that tax, at what rate or rates is it**

### **charged, and when must tax returns be submitted and tax paid?**

No, Guernsey does not levy wealth taxes.

### **6. Is tax charged on death or on gifts by individuals and, if so, which factors cause the tax to apply, when must a tax return be submitted, and at what rate, by whom and when must the tax be paid?**

There is no estate duties (save for registration fees and *ad valorem* duty for a Guernsey Grant of Representation where the deceased dies leaving assets in Guernsey which require presentation of such a Grant). Guernsey does not levy gifts tax.

A fee is payable in order to obtain probate in respect of the personal estate of a deceased person in Guernsey which is calculated by reference to the gross value of the estate. The fees approximate to 0.35% of the gross value and the fees are capped at £200,000. This is not an estate tax and is only payable if a grant of representation is sought

### **7. Are tax reliefs available on gifts (either during the donor's lifetime or on death) to a spouse, civil partner, or to any other relation, or of particular kinds of assets (eg business or agricultural assets), and how do any such reliefs apply?**

Guernsey does not levy gifts tax and accordingly there are no tax reliefs for gifts other than in respect of charitable giving (see below).

### **8. Do the tax laws encourage gifts (either during the donor's lifetime or on death) to a charity, public foundation or similar entity, and how do the relevant tax rules apply?**

Charities are exempt from Guernsey income tax pursuant to Section 40(k) of ITL. To apply for exemption the charity must be a Guernsey registered charity (registered in accordance with the Charity Law, 2008), or a charity not required to be registered in accordance with that law.

With effect from 1 January 2021, tax relief on charitable donations can be claimed by charities on donations of £500 - £7,500 per individual (£15,000 per married

couple) per calendar year (the relevant amounts were £5,000 per individual and £10,000 per married couple for 2010 – 2020 inclusive). The donation will be seen to have been made to the charity net of income tax. For example, a donation of £5,000 grossed up ( $£5,000 \times 100/80 = £6,250$ ) results in a repayment to the charity, by income tax, of £1,250, or 25% of the original donation.

To enable the charity to claim the tax relief, a donor declaration form needs to be completed by the donor, to certify that the donor has met certain conditions.

A repayment claim form and a repayment summary completed by the charity are submitted to the Revenue Service after the relevant calendar years ends, along with the completed original certificated signed by the donor. The charity should retain a copy of the certificate for their own records.

### **9. How is real property situated in the jurisdiction taxed, in particular where it is owned by an individual who has no connection with the jurisdiction other than ownership of property there?**

Income from Guernsey situs land and property is subject to income tax at a rate of 20%. Such income is subject to an obligation to deduct and withhold tax from payments. This obligation arises in relation to payments by “agents”. Section 48 defines an “agent” to include any person receiving or paying income on behalf of or to a non-resident, whether directly or indirectly through intermediaries or other third parties for onward transmission to the non-resident.

Document duty is charged on the acquisition of Guernsey real property at the following standard rates:

- 2.25% of any part of the value of the transaction not exceeding £250,000
- 3.5% of any part of the value of the transaction exceeding £250,000 but not exceeding £400,000
- 4% of any part of the value of the transaction exceeding £400,000 but not exceeding £750,000
- 4.25% of any part of the value of the transaction exceeding £750,000 but not exceeding £1 million
- 4.5% of any part of the value of the transaction exceeding £1 million but not exceeding £2 million
- 5.5% of any part of the value of the transaction exceeding £2 million

However, with effect from 2 November 2022, if the property is a residential property that is being purchased by someone, and is not utilised as their main home, or the main home of someone associated with them (such as a close family member, or a company’s beneficial owner), document duty is payable at a higher rate. An uplift of 2% in additional duty is payable on top of the standard rate shown above.

By contrast, for those who are downsizing before 1 January 2025, they will benefit from a reduction of document duty payable on the purchase of a qualifying replacement home. Subject to meeting applicable conditions, the first £400,000 of the property value will be exempt from document duty so that document duty is only payable on that part of the value that exceeds £400,000.

Ownership of property is taxed through a cadastral register of property. All land and buildings are measured by area with each square metre being a taxable property unit and each property unit is allocated to a tax band designated by the use to which that part of the property is defined. The tax rate for each band is levied annually for each calendar year commencing 1st January. The tax is payable by the owner of the property. The tax rates are reviewable annually as part of the general annual budget review of the States of Guernsey. Further “parochial taxes” are also levied on owners of property annually for each calendar year commencing 1st January for the provision of localised services (e.g. waste collections and street lighting) within the parochial administrative districts of the island and are voted on annually by the owners and/or occupants of property in each parish according to the budgeted proposals for the costs of meeting such services. There is also an island wide standing charge for domestic waste collection (or any business premises admitted to the service) which is not subject to the parochial vote but is dealt with as part of the general annual budget review of the States of Guernsey.

### **10. Are taxes other than those described above imposed on individuals and, if so, how do they apply?**

Guernsey currently has no other substantive taxes such as value added tax or goods and services tax or wealth tax. Aside from income tax, document duty and property taxes revenues are generated by social security contributions and excise duty.

### **11. Is there an advantageous tax regime**

### for individuals who have recently arrived in or are only partially connected with the jurisdiction?

Income tax is levied on the worldwide income of Guernsey residents at a flat rate of 20% subject to personal reliefs and deductions. With effect from 1 January 2023 tax is capped at £150,000 on non-Guernsey sourced income (which would include Guernsey bank interest) and £300,000 on worldwide income (other than income generated as a result of the ownership of real property in Guernsey).

Individuals who are resident but not principally resident or solely resident can elect to pay either a standard charge of £40,000 or 20% of their Guernsey source income. A person who elects to pay the standard charge will have no liability to tax on their non-Guernsey source of income but liability will arise on total Guernsey source income (other than bank deposit interest). The amount of the standard charge paid can be set off against the tax due on Guernsey source income. A person electing to pay the standard charge will have no entitlement to any allowances, reliefs or deductions.

Individuals paying either the tax cap or the standard charge are able to file a simplified tax return. They are not obliged to declare all the details of their income although the Director of Income Tax retains the power to call for this information.

With effect from 1 January 2023 personal allowances and other deductions are abated for individuals earning over £90,000 per annum.

A new resident to Guernsey (who has not been resident in Guernsey in the previous 3 years) may claim a tax cap of £50,000 for the year they arrive in Guernsey and for the following 3 years where that individual has paid £50,000 or more in document duty on the purchase of specific property made available for occupation by persons who are not locally qualified residents where that property is purchased within 12 months either before or after they take up permanent residency in Guernsey. This tax cap applies in respect of worldwide income.

A resident of Alderney (a separate jurisdiction but within the Bailiwick of Guernsey) who has not previously been capped as above will be capped at £50,000 on their "Alderney qualifying income" for each year from 2016 to 2025. "Alderney qualifying income" is income from all sources regardless of where it is from except for any income arising from the ownership of real property in either Guernsey or Alderney.

### 12. What steps might an individual be advised to consider before establishing residence in (or becoming otherwise connected for tax purposes with) the jurisdiction?

Tax and legal advice should be taken in the individual's current place of residence and any place of domicile of origin and/or choice (if different), as well as in Guernsey.

### 13. What are the main rules of succession, and what are the scope and effect of any rules of forced heirship?

The Inheritance (Guernsey) Law, 2011 (the "**2011 Inheritance Law**") abolished forced heirship and allows for individuals to leave their assets to whomever they wish. However, the 2011 Inheritance Law does not apply to Wills executed before the commencement date (2<sup>nd</sup> April 2012), unless the testator specifically declares in their Will or in a codicil that it is to apply. Where there is no Will the 2011 Inheritance Law sets out how the deceased's assets will pass and a person's real and personal estate are not treated the same in Guernsey. Real property also known as 'realty' (buildings and land) in Guernsey is subject to the Guernsey laws of succession even if the owner is not domiciled in the island. On the other hand, personal property also known as 'personalty' (everything other than buildings and land) owned by a non-domiciled individual is subject to the succession laws of the individual's last domicile.

Where an individual domiciled in Guernsey dies without effectively executing a Will, Guernsey law will dictate who is to benefit from their estate. This will be determined as set out below, for personal estate:

- i. where the deceased has both a spouse or civil partner and descendants, they will each receive one half share in the assets;
- ii. where the deceased has no spouse or civil partner but descendants, the whole will pass to the descendants;
- iii. where the deceased has a spouse or civil partner but no descendants, the whole will pass to the spouse or civil partner; and
- iv. where the deceased has no spouse or civil partner or descendants, it will be pass to the 'heirs at law' (collaterals, ascendants etc.).

For realty, where the deceased has both a spouse and descendants the spouse will receive an undivided one half share of the matrimonial home, an undivided one

half share of any other realty and life enjoyment until death or remarriage of the remaining one half share of the matrimonial home and the descendants will receive the rest.

#### **14. Is there a special regime for matrimonial property or the property of a civil partnership, and how does that regime affect succession?**

There is no special regime for matrimonial property. Whilst recognising civil partnership contracted under foreign law, Guernsey law does not currently permit the contracting of civil partnerships (although it allows for same sex marriage).

The inheritance rules in the 2011 Inheritance Law apply to spouses and civil partners and "spouse" means a party to the marriage and for the purposes of the Law, a marriage under the law of any country or territory is not prevented from being recognised only because it is the marriage of a same-sex couple.

After the death of a spouse/former spouse (or a civil partner registered under the Civil Partnership Act 2004), it is possible to make an application for financial provision against the deceased's estate under Part II of the 2011 Inheritance Law, 2011.

#### **15. What factors cause the succession law of the jurisdiction to apply on the death of an individual?**

Guernsey law applies to the succession to real property in the Island. Guernsey law only applies to the succession of personalty where the individual dies domiciled in Guernsey.

#### **16. How does the jurisdiction deal with conflict between its succession laws and those of another jurisdiction with which the deceased was connected or in which the deceased owned property?**

Whilst Guernsey is not a member of the EU and as such is regarded as a "Third State" nevertheless if an individual in Guernsey owns real property in an EU country, the EU Succession Regulation Brussels IV (the "Regulation") states that the succession will be governed by the law of the place where that person is "habitually resident". The Regulation also provides that a person may elect, through a European Certificate of Succession or otherwise that the law of their nationality

should apply to their succession. A Guernsey person can either elect to have the law of their nationality to apply to all of their estate or they can rely on the Regulation taking effect when they die such that if their property is situated in one of the EU countries who have signed up to the Regulation, that country will apply the law of the country where that person is considered habitually resident.

Article 34 of the Regulation states that *renvoi* is set aside when the law of succession has been specifically chosen by the deceased person unless the applicable law is that of a third state (such as Guernsey) in which case the Private International Law rules of that third state would apply and, in the case of Guernsey *renvoi* would apply and the succession would be governed by the place where the real property is situated (the "*lex situs*"). As far as real property situated outside the EU is concerned, the same rationale would be applied i.e. *lex situs* would apply to the succession to it.

The succession to an individual's personal property is governed by their domicile at the time of their death. Where a Guernsey grant is required to release a Guernsey asset to the deceased's personal representative the applicant will be required to provide proof of domicile. The Royal Court of Guernsey will recognise the doctrine of *renvoi* where a conflict of laws arises.

#### **17. In what circumstances should an individual make a Will, what are the consequences of dying without having made a Will, and what are the formal requirements for making a Will?**

It is preferable for an individual who owns Guernsey assets to make a Guernsey Will. A separate Will of Guernsey assets enables an application for probate to proceed in Guernsey without delay. Obtaining a grant of representation in Guernsey is swift. If the estate has assets in a number of jurisdictions, being able to access assets in Guernsey while grants are obtained elsewhere is often advantageous.

If an individual is intestate or has a single Will dealing with his worldwide assets, a grant is usually obtained in the jurisdiction of the deceased's residence before applying for a grant in Guernsey for the Guernsey assets.

Pursuant to section 26, Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2006 ("Law Reform Law") a Will executed in Guernsey must be both:

- In writing and signed by the testator or by some other person in his presence and by his direction. The testator must appear to have intended by his signature to give effect to the Will.
- Signed or acknowledged by the testator in the presence of two or more witnesses (who must be over 14 years of age and not the spouse or a descendant of the testator) present at the same time. Each witness must either attest and sign the Will or acknowledge his signature in the presence of the testator (but not necessarily in the presence of any other witness).

A single Will may dispose of both real and personal property or, and more commonly, separate Wills can be executed.

A holographic Will for movables executed in Guernsey is also acceptable.

A revoked Will can only be revived by re-execution.

### **18. How is the estate of a deceased individual administered and who is responsible for collecting in assets, paying debts, and distributing to beneficiaries?**

Ownership of real property situated in Guernsey passes automatically to the heirs. In relation to personal property, the administration is effected by the executor, where there is a Will or the administrator, where there is no Will or no executor to take the grant.

### **19. Do the laws of your jurisdiction allow individuals to create trusts, private foundations, family companies, family partnerships or similar structures to hold, administer and regulate succession to private family wealth and, if so, which structures are most commonly or advantageously used?**

Under Guernsey law it is possible for individuals to establish trusts, private foundations, family companies, family partnerships or similar structures to hold, administer and regulate succession to private family wealth.

For succession planning purposes, the most commonly used structure is a trust. Foundations, although a relatively new tool for holding private wealth and

succession planning in Guernsey, are becoming more common as well.

### **20. How are these structures constituted and what are the main rules that govern them?**

**Trusts** – the Trusts (Guernsey) Law, 2007 (the “**Trusts Law**”) is a modern statutory framework for the administration of trusts and is supported by an extensive body of local case law. Under the Trusts Law, a trust may be created by oral declaration, instrument in writing, conduct or in any other way whatsoever (other than a unit trust or a trust of real property situated in Guernsey, which may only be created by an instrument in writing).

The majority of trusts established in Guernsey are established as wholly discretionary trusts, meaning that no one beneficiary has any right to any particular part of the trust fund until the Trustees, exercising their discretion, decide to appoint a specified interest in the trust assets to them. The Trusts Law also envisages the establishment of fixed interest trusts such as life interest trusts, purpose trusts (charitable and non-charitable) and reserved powers trusts (where the Settlor reserves to himself or grants to a third party certain powers and functions in connection with the trust). Guernsey trusts are capable of perpetual existence and revocable and irrevocable trusts are permitted.

There is no trusts register in Guernsey and there is no requirement for details of trusts or trust accounts to be disclosed to any authority.

**Foundations** – the Foundations (Guernsey) Law, 2012 came into effect on 8 January 2013 and provides for the establishment of Guernsey foundations from that date. A foundation must be registered with the Guernsey Registrar and, unlike a trust, is, upon establishment, a legal person with its own personality independent from that of the Founder and of the Council which control the foundation. The assets of a foundation belong to the foundation itself and not its Council.

A foundation has a charter and rules. The charter must set out the name and purpose of the foundation, a description of its initial endowment and its duration and the rules set out the rules by which the Councillors must administer the foundation. A foundation may have beneficiaries or a purpose, but are not intended to be used to carry out a commercial activity.

A unique feature of Guernsey foundations is the distinction drawn between enfranchised and disenfranchised Beneficiaries. Enfranchised beneficiaries are entitled to information on the foundation and are

entitled to apply to the Royal Court of Guernsey to make certain applications in respect of the foundation, whereas disenfranchised beneficiaries are not entitled to any information and have no standing before a court. Where there are disenfranchised beneficiaries or purposes, the foundation must have a Guardian who has a fiduciary duty to enforce the terms of the foundation.

## 21. What are the registration requirements for these structures and what information needs to be made available to the relevant authorities? To what extent is that information publicly available?

**Trusts** - Trusts Instruments are not required to be filed with any public body in Guernsey and information relating to the trust is not accessible by the general public.

**Foundations** - a Guernsey foundation is required to make certain limited information public in a register maintained by the Guernsey Registrar of Companies. The information that is available to the public includes the name and registered number of the foundation, name and address of Councillors and Guardians and details of the registered office.

**Companies, Limited Partnerships and Foundations**-beneficial ownership details are required to be provided for inclusion in the Beneficial Ownership ("BO") Register. The BO Register is not open to the public and information may only be accessed by law enforcement agencies.

## 22. How are such structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

Where the settlor of a trust is resident in Guernsey, unless that settlor and their spouse are excluded from all possible benefit, the income of the trust is taxed in the hands of the settlor.

Trustees of trusts with Guernsey resident beneficiaries may become subject to Guernsey income tax on the income of the trust.

Trusts with no Guernsey resident beneficiaries are only liable to tax on Guernsey source income.

Guernsey bank deposit interest is not treated as Guernsey source income when received by trustees of a trust with no Guernsey resident beneficiaries.

Distributions from trusts received by Guernsey residents

are taxed in the hands of the beneficiary however credit is given for tax already paid by the trustees or the Guernsey resident settlor.

A Guernsey foundation is taxed as if it were a company. The standard rate of income tax for companies is 0%. Taxation rates of 10% or 20% applies to income from certain activities detailed in ITL. These are unlikely to apply to a foundation established for the preservation and management of private wealth.

## 23. Are foreign trusts, private foundations, etc recognised?

Guernsey law recognises trusts established under a foreign law.

The Royal Court of Guernsey has non-exclusive jurisdiction in respect of any foreign law trust with a Guernsey resident trustee, with Guernsey situs assets or with terms which provide that the Royal Court shall have jurisdiction. The foreign law trust shall be interpreted in accordance with its proper law.

A foreign trust, in the same manner as a Guernsey trust, is unenforceable to the extent that it purports to do anything contrary to Guernsey law, it confers or imposes any right or function the exercise or discharge of which would be contrary to Guernsey law or the Royal Court declares that it is immoral or contrary to public policy.

Professional trustees in Guernsey may administer trusts established elsewhere and which are governed by a foreign law.

Guernsey law also recognises foundations established under a foreign law.

## 24. How are such foreign structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

The tax treatment of such structures depends on the tax residence of the individual / structure.

The proper law of the trust or foundation does not affect the tax treatment of the settlor, founders, trustees, directors and beneficiaries. For Guernsey purposes, the rules set out in question 22 will apply.

## 25. To what extent can trusts, private foundations, etc be used to shelter assets from the creditors of a settlor or



## beneficiary of the structure?

Trusts and foundations may be robust asset protection vehicles. On settling the assets into a valid trust or foundation the settlor will be transferring the legal ownership, dominion and control of those assets. The legal title of the assets would then vest in the trustees or the foundation. Therefore, in usual circumstances this would mean that the assets in the trust or foundation will be insulated from claims from his future creditors.

However, if the transfer of assets has been undertaken to prejudice the claims of existing creditors they are not left without a remedy. Guernsey law recognises a principle derived from Roman law that enables certain creditors to set aside transactions at an undervalue designed to prejudice existing creditors. This is known as a '*Pauline*' action. A *Pauline* action enables creditors of a settlor to apply to the Royal Court of Guernsey to set aside a disposition undertaken to defraud them if they can demonstrate certain elements. In order to bring a successful claim under a *Pauline* action, the claimants will need to demonstrate:

- that they were creditors of the settlor of the trust or the founder of the foundation;
- that the facts giving rise to their claim pre-dates the transfer of assets to the trust or foundation. For the avoidance of doubt, the claimants would be deemed to be creditors from when the facts giving rise to their cause of action occurred, even if the validity of the cause of the claimants' action is established at a subsequent date i.e. by a later judgment of a court. In other words it does not matter if proceedings have concluded or not (or even been initiated or not). All that matters is that the circumstances that give rise to the claim have occurred;
- that the settlor or the founder was insolvent at the time of the transfer of assets to the trust or foundation or was rendered insolvent by the act of transferring the assets into the Potential Trust. Insolvency is measured on the balance sheet test i.e. deducting liabilities from assets owned; and
- that the settlor or founder transferred the assets with the intention of defrauding such claimants. Even where there is more than one purpose for settling assets into a trust or foundation, a *Pauline* action may still be successful if the claimants can demonstrate that the dishonest intention to defraud was a substantial purpose of the transaction.

The limitation period for bringing a *Pauline* action in Guernsey is six years.

*Pauline* actions are revocatory in nature which means that if a *Pauline* action is successful, then the assets are put back in the position they would have been had the transfer not taken place i.e. in the settlor or founder's estate which means the claimants can pursue them to settle the judgment.

## 26. What provision can be made to hold and manage assets for minor children and grandchildren?

The age of majority in Guernsey is 18. A person with parental responsibility can deal with the assets of a minor.

It is common for property given to a child to be held upon trust. The trust provisions may provide that the child will have a vested interest in the trust assets upon reaching a specified age. The trust provisions would usually include wide discretionary powers allowing the trust assets to be used for the benefit of the child.

Alternatively, assets could be gifted to a Guernsey foundation of which the child is a beneficiary. The provisions of a foundation can provide that a child is a disenfranchised beneficiary until he/she reaches a specified age.

## 27. Are individuals advised to create documents or take other steps in view of their possible mental incapacity and, if so, what are the main features of the advisable arrangements?

While individuals still have capacity they can prepare Lasting Powers of Attorney ("**LPAs**"). An LPA is a legal document (governed by the Capacity (Bailiwick of Guernsey) Law, 2020 and the Capacity (Lasting Powers of Attorney) (Bailiwick of Guernsey) Ordinance, 2022) which allows an individual (the "**Grantor**") to appoint one or more individuals (the "**Attorney(s)**") to manage their affairs on their behalf, offering them the comfort that a trusted person will be able to appropriately manage their affairs during any loss of capacity.

There are two types of LPA, one for property and financial affairs ("**Finance LPA**") and one for health and welfare matters ("**Health LPA**"). The Finance LPA enables a Grantor to appoint attorneys to make decisions about their financial affairs, such as managing their bank accounts, paying their bills and dealing with their

property and investments. The Grantor can elect that their attorneys act while the Grantor has capacity with the Grantor's permission. This is a useful way of using Finance LPA because it can be used outside of circumstances where the Grantor has lost capacity for example where the Grantor cannot deal with their affairs for another reason i.e. if they are abroad, or cannot leave their house, or during a hospital stay. Alternatively, the Grantor may decide that the attorneys can only act once they have lost capacity.

By contrast, the Health LPA only comes into effect and can be used once the Grantor has lost capacity. A Health LPA allows the attorneys to make decisions about the Grantor's health, care options, what medical treatments they can receive and whether they receive life sustaining treatment.

Attorneys must be over 18 and for the purposes of the Finance LPA cannot be insolvent. They must act in the best interests of the Grantor. The Committee for Health and Social Care has produced a Code of Practice for attorneys to assist them with their role.

The application to make an LPA has to be submitted to HM Greffier. An appointment is arranged for the Grantor to attend the Greffe, where a representative of the Greffier determines whether the Grantor has the capacity to make the LPAs by asking certain questions.

A general power of attorney executed under Guernsey law lapses on supervening mental incapacity. Enduring or lasting powers of attorney made by non-resident donors that are effective under the law of the competent foreign jurisdiction may be recognised by the Royal Court. Otherwise, where an individual suffers from infirmity of mind or body (the patient), application is made to the Royal Court by the person wishing to be appointed as the curateur (guardian) of the patient. Evidence of infirmity can be given orally or by affidavit. Up to five members of the patient's family are joined to form a family council who act as advisers. The guardian must look after the patient's property. No security is required.

Individuals can create living Wills which set out their wishes in terms of their future care and medical treatment.

## **28. What forms of charitable trust, charitable company, or philanthropic foundation are commonly established by individuals, and how is this done?**

Charities are recognised in Guernsey and may be

governed by the law of Guernsey. It is also possible for an entity that is not governed by the law of Guernsey to fall within the definition of a charity in Guernsey. An organisation that is based in, or established, administered, controlled in or operated from Guernsey or Alderney can be a Guernsey charity or non-profit organisation. Charities and other non-profit organisations can be formed as a company, trust, foundation, limited partnership (with or without legal personality), a limited liability partnership or an unincorporated association.

An organisation is considered to be a charity if all of the purposes of the organisation are charitable or purely incidental or ancillary to its charitable purposes. Any organisation that is not a charity but that is established solely or principally either for the non-financial benefit of its members or for the benefit of society and, without limitation, including any organisation established solely or principally for social, fraternal, educational, cultural or religious purposes, or for the carrying out of any other types of good works, is classed as a non-profit organisation in Guernsey.

A charity or non-profit organisation with assets of £100,000 or more or an annual income of £20,000 or more must register with the Registrar of Charities. Further, a charity or non-profit organisation whose activities involved raising or distributing funds outside of the Bailiwick of Guernsey must, subject to certain exceptions, register with the Registrar of Charities regardless of the value of their assets or level of their income. Charities and non-profit organisations that are not required to register may choose to register voluntarily. A charity or non-profit that is required to

Charities are exempt from Guernsey income tax pursuant to Section 40(k) of the ITL.

## **29. What is the jurisdiction's approach to information sharing with other jurisdictions?**

Guernsey has a long-standing commitment to being a well-regulated, co-operative and transparent international finance centre. The Global Forum has assessed Guernsey as being "Compliant", being the highest rating for meeting the international standards on transparency and information exchange. Guernsey participates in exchange of information through the TIEA, CRS and FATCA regimes. Furthermore, in December 2013, the States of Guernsey agreed that Guernsey should participate in the Convention on Mutual Administrative Assistance in Tax Matters ("the Multilateral Convention"). This became effective from 1 August 2014, and expanded Guernsey's network of

exchange partners considerably beyond those with which it has TIEAs and DTAs.

### 30. What important legislative changes do you anticipate so far as they affect your

#### advice to private clients?

Some updates for the Trusts (Guernsey) Law, 2007 are under consideration but no current timeframe for draft amendment legislation is available.

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## Contributors

### Natasha Kapp

Partner, Private Client and Trusts, Guernsey

[natasha.kapp@careyolsen.com](mailto:natasha.kapp@careyolsen.com)



### Russell Clark

Partner, Head of Private Client and Trusts, Guernsey

[russell.clark@careyolsen.com](mailto:russell.clark@careyolsen.com)



### Laila Arstall

Counsel, Private Client and Trusts, Guernsey

[laila.arstall@careyolsen.com](mailto:laila.arstall@careyolsen.com)



### Patricia Montgomery

Counsel, Private Client and Trusts, Guernsey

[patricia.montgomery@careyolsen.com](mailto:patricia.montgomery@careyolsen.com)

