

Private Client Law in Jersey: Overview

Keith Dixon, Carey Olsen

global.practicallaw.com/0-504-1302

TAXATION

Tax Year and Payment Dates

1. When does the official tax year start and finish in your jurisdiction and what are the tax payment dates/deadlines?

The official tax year in Jersey starts on 1 January and ends on 31 December each calendar year.

Income tax in Jersey is collected in different ways depending on whether the taxpayer is employed, self-employed, not working or a combination of these. Income tax is collected by a deduction from the taxpayer's salary under the Income Tax Instalment Scheme (ITIS), or by payments made on account.

Strictly, income tax is payable by the taxpayer on the day after receipt of the Comptroller of Taxes assessment, but this is subject to certain exceptions including ITIS. The assessments for a tax year ending on 31 December are usually sent out in September in the year following the year of assessment. Penalties for late payment surcharges apply from close of business on the Friday following the first Monday in December of the following year of assessment.

Domicile and Residence

2. What concepts determine tax liability in your jurisdiction (for example, domicile and residence)? In what context(s) are they relevant and how do they impact on a taxpayer?

Jersey has concepts of domicile and residence.

Domicile

The concept of domicile is central to the rules governing the succession to movable property under Jersey law. Jersey broadly follows the same common law rules as England and Wales in determining the location of a person's domicile, with some minor differences. The common law of Jersey provided that a married woman living with her husband would acquire a domicile of dependence following that of her husband. However, the Probate (Jersey) Law 1998 (Probate Law) now provides that, for a grant of probate or letters of administration relating to the movable estate of a deceased woman who has been married, her domicile is ascertained by reference to the same factors as any other individual capable of having an independent domicile.

Generally, a child has a domicile of dependence determined by the domicile of one or other of its parents, according to circumstances. However, for a grant in and a distribution of a movable estate of a deceased minor, the deceased minor will have first become capable of having an independent domicile if and when he attains the age of 16 years or is married under that age (Probate Law).

Residence

The charge to income tax in Jersey is assessed by reference to a person's residence status:

- A person who is resident and ordinarily resident in Jersey is charged to income tax on all of his/her Jersey and worldwide source income, whether remitted to Jersey or not.
- A person who is habitually resident in Jersey is charged to income tax on all Jersey source income and any worldwide source income which is remitted to Jersey.
- A non-Jersey resident is charged to income tax on Jersey source income only (although by longstanding concession, Jersey bank interest and social security pensions are deemed to be non-Jersey source income for these purposes).

If an individual whose home has been abroad maintains an abode in Jersey which he/she uses, he/she is regarded as resident for any year in which he visits Jersey, for whatever length of time. Further:

- If his/her visits span one complete calendar year, he/she is regarded as ordinarily resident.
- If his/her visits are habitual after four years, unless intention to make them habitual is shown earlier, he/she is also regarded as ordinarily resident.

However, an individual whose centre of life is abroad, in the sense that he/she has a home and a business or professional activities abroad which keep him/her more or less continuously outside Jersey, is not regarded as ordinarily resident, unless the annual average period spent in Jersey amounts to or exceeds three months.

Where the individual's professional or business activities have ceased due to him/her having retired from work, he/she is not refused the concession to the charge to income tax if he/she can show that, in the ordinary course of his/her life, his permanent home is settled at one specific place abroad.

For the residence of companies, a company incorporated in Jersey is generally regarded as being resident in Jersey, unless both:

- Its business is centrally managed and controlled in a country or territory where the highest rate at which any company can be charged to tax on any part of its income is 10% or higher.
- The company is resident for tax purposes in the country/territory.

A company incorporated outside Jersey is regarded as not being resident in Jersey unless its business is managed and controlled in Jersey.

Taxation on Exit

3. Does your jurisdiction impose any tax when a person leaves and/or renounces their citizenship (for example, an exit tax)? Are there any other consequences of leaving (particularly with regard to individuals domiciled in your jurisdiction)?

Jersey does not impose any exit tax when a person leaves the jurisdiction and/or renounces their citizenship.

Where an individual leaves Jersey to take up permanent residence abroad, assessment on income arising overseas for the year in which residence ceases is based on the actual income arising in the period from 1 January to the date of departure.

Temporary Residents

4. Does your jurisdiction have any particular tax rules affecting temporary or partial year residents?

There are no particular rules affecting temporary or partial year residents. Income tax is collected from the salary of any employed resident by a deduction under ITIS, whether or not that person is a temporary or permanent resident.

Taxes on the Gains and Income of Foreign Nationals

5. How are gains on real estate or other assets owned by a foreign national taxed? What are the relevant tax rates?

Capital gains are not subject to tax in Jersey. Any attempts to turn income into capital artificially will probably be challenged by the Comptroller of Taxes under blanket anti-avoidance provisions. Therefore, any gains on property/assets owned by a foreign national are not subject to tax under Jersey law, unless they offend the anti-avoidance provisions.

6. How is income received by a foreign national taxed? Is there a withholding tax? What are the income tax rates?

The charge to Jersey income tax is assessed primarily by a person's residence and not by his/her nationality (see *Question 2*).

By longstanding concession, an assessment to income tax is not made on a person who is not resident in Jersey in relation to Jersey bank interest or a Jersey social security pension. However, if a non-resident relief claim is made in respect of other Jersey income, any Jersey bank interest and social security pension is included in the calculation as income tax subject to Jersey tax. If the calculation results in a liability greater than tax suffered by deduction or charged at the standard rate on other Jersey income, no action is taken to collect the excess.

The concession in respect of Jersey bank interest also applies to:

- A non-resident person entitled to interest from designated accounts.
- Trustees of trusts with no Jersey resident beneficiaries.
- The attorney executor of the estate of the deceased non-resident.
- The executor of the estate of the deceased Jersey resident, to the extent that the income is payable to beneficiaries who are not resident in Jersey.

The standard rate of income tax for an individual is 20%, a rate which has applied since 1940. A Jersey resident corporate body is now subject to income tax under Jersey's "zero/ten" regime, that is, the rate of income tax is either 0% or 10%, depending on the business activities of the corporate body.

Tax at Death

7. What taxes are imposed on the death of an individual? What is the basis of the inheritance tax or gift tax regime (or alternative regime if relevant)?

There is no inheritance tax or gift tax regime in Jersey.

8. What are the rates of tax for each type of tax levied at death?

There is no inheritance tax or gift tax regime in Jersey.

9. Does the inheritance tax or gift tax regime apply to foreign owners of real estate and other assets?

There is no inheritance tax or gift tax regime in Jersey.

10. Are there any other taxes on death or on lifetime gifts?

There are no taxes imposed on lifetime gifts.

There is no stamp duty in Jersey other than in relation to:

- The conveyance of immovable property (about 5% for value, payable by the buyer).
- An application to the Royal Court for a grant of probate or letters of administration (about 0.5% to 1% of the declared value of the net movable estate, subject to certain *de minimis* provisions and a cap for estates in excess of a fixed amount, currently GBP13,360,000).

Taxes on Buying Real Estate and Other Assets

11. Are there any other taxes that a foreign national must consider when buying real estate and other assets in your jurisdiction?

Purchase and Gift Taxes

There are no taxes imposed on the purchase of any movable assets/property in Jersey save that land transaction tax is imposed on any share transfer transactions where the shares "confer a right of occupation of land in Jersey".

Annual Rates

Immovable property (both commercial and residential property) situated in Jersey is subject to annual local rates, which are determined by reference to the notional rental value of the property.

GST

On 1 May 2008 Jersey introduced a Goods and Services Tax (GST), a tax on the sales of good and services in Jersey. GST is currently charged at the *ad valorem* rate of 5% on the majority of good and services supplied in Jersey for local use, including imports.

Wealth Taxes

There are no wealth taxes that apply to foreign nationals with assets above a certain value in Jersey.

12. What tax-advantageous real estate holding structures are available in your jurisdiction for non-resident individuals?

Jersey is not a tax-advantageous jurisdiction. Its laws intend to provide a platform for a wide variety of international commercial business transactions, in a well-regulated, tax-neutral environment.

Jersey law permits the creation of a wide variety of property holding vehicles, by both resident and non-resident individuals. The Companies (Jersey) Law 1991 permits the incorporation of several different forms of company, including:

- Companies with shares.
- Companies with guarantor members.
- Companies of limited duration.
- Protected cell companies.

In addition, Jersey recognises a number of different forms of partnership, including a:

- Common law partnership.
- Limited partnership.
- Limited liability partnership.
- Separate limited partnership.
- Incorporated partnership.

Trusts are routinely used in Jersey for many types of property holding structure. Jersey law introduced the concept of a foundation (a corporate body with some of the characteristics of a trust) (Foundations (Jersey) Law 2009). However, Jersey immovable property cannot be held directly on trust or by a Jersey foundation.

Taxes on Overseas Real Estate and Other Assets

13. How are residents in your jurisdiction taxed on real estate or other assets owned outside of the jurisdiction?

Any income derived from the real estate or other assets situated outside of Jersey would be charged to income tax (see *Question 2*).

International Tax Treaties

14. Is your jurisdiction a party to many tax treaties with other jurisdictions?

Currently, Jersey has full double taxation agreements with:

- Cyprus.
- Estonia.
- Guernsey.
- Hong Kong, Special Administrative Region of the People's Republic of China.
- Isle of Man.
- Liechtenstein.

- Luxembourg.
- Malta.
- Mauritius.
- Qatar.
- Rwanda.
- Seychelles.
- Singapore.
- United Arab Emirates.
- The UK.
- Copies of those agreements can be found on the Comptroller of Taxes' website (www.gov.je).

The double taxation agreements generally contain provisions which allow the tax authorities to exchange such information as may be foreseeably relevant for the enforcement of domestic laws concerning taxes. It is expected that further double taxation agreements will be concluded in the near future with other countries, including Bahrain and Saudi Arabia.

In addition, Jersey has concluded a number of tax information exchange agreements with several countries, including the UK and the US. The full list of double tax treaties and tax information exchange agreements can be found on Jersey Finance's website (www.jerseyfinance.je).

Automatic Exchange of Tax Information

15. Has your jurisdiction implemented the Organisation for Economic Co-operation and Development's (OECD's) multilateral Common Reporting Standard (CRS) into its domestic law?

Jersey became a party to the OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters on 1 June 2014. In October 2014, Jersey signed a Multilateral Competent Authority Agreement concerning the CRS with 50 other jurisdictions, including the other Crown Dependencies and the British Overseas Territories.

The CRS has now been implemented as part of Jersey's domestic law (see the Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Jersey) Regulations 2015, which came into force on 1 January 2016).

WILLS AND ESTATE ADMINISTRATION

Governing Law and Formalities

16. Is it essential for an owner of assets in your jurisdiction to make a will in your jurisdiction? Does the will have to be governed by the laws of your jurisdiction?

It is not essential for an owner of assets in Jersey to make a will in Jersey, although it is advisable.

Jersey law makes a very important distinction between movable property and immovable property:

- Succession to movable property situated in Jersey is governed, as a matter of Jersey law, by the law where the relevant person is domiciled (*lex domicilii*).
- Succession to immovable property is governed by the law where the immovable property is situated (*lex situs*).

Broadly:

- Immovable property consists of land, buildings and their fixtures and fittings, and certain rights in and over land.
- Movable property consists of everything else. Apart from movable tangible property, it includes items such as intangible assets, cash, shares, insurance policies, intellectual property and legal rights.

In relation to movable property, Jersey law follows similar procedures as in England and Wales, by distinguishing between persons who have a right to administer the estate and the ultimate beneficiaries.

If the deceased has left a will, the executor is the person entitled to administer the estate. In the case of an intestate, estate letters of administration are normally granted to the surviving spouse, eldest son or the next closest heir, in an order of priority dictated by Jersey's customary law.

Any executor or the duty appointor administrator will be expected to administer the deceased's movable estate "well and faithfully" that is, to:

- Establish legal title to the assets in the estate.
- Settle the debts of the estate.
- Pass legal title and the assets to the beneficiaries ultimately entitled to them.

However, in the case of immovable property (real estate), Jersey law is quite different from English law. Ownership passes by operation of law to the person(s) entitled by will or on intestacy, without the need for a person to establish a separate right to administer the estate. There is no need to apply for a grant of probate of a will of Jersey immovable property. On the testator's death, the will is registered in the Royal Court. Registration automatically evidences ownership of the immovable property by the beneficiary or beneficiaries.

A will dealing with movable property situated in Jersey does not have to be governed by the laws of Jersey. The Probate Law amended the old common law rules and now, as a matter of Jersey law, a testamentary document is treated as properly executed (formally valid) if, at the time of its execution or at the time of the testator's death, its execution conforms to either Jersey law or the internal law in force of the:

- Territory where it was executed.
- Territory where the testator was domiciled.
- Territory where the testator was habitually resident.
- State of which the testator was a national.

17. What are the formalities for making a will in your jurisdiction? Do they vary depending on the nationality, residence and/or domicile of the testator?

The formalities for making a will in Jersey are as follows:

- The will must be in writing and signed by the testator, or if incorporated by some other person, in the testator's presence and by his/her direction.
- It must appear that the testator intended by his/her signature to give effect to the will.
- The signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time.

- Each witness must either attest and sign the will or acknowledge his/her signature in the presence of the testator and in the presence of at least one other witness.
- The witnesses must be over 18 years of age and must not be beneficiaries under the will.

However, it is also possible in Jersey to make a valid holograph will, that is, a will entirely written, dated and signed by the testator. Such a will is regarded as valid as a matter of Jersey law, even if the other formalities have not all been met. As a consequence of the outbreak of the 2019 novel coronavirus disease (COVID-19), temporary regulations have been introduced to enable wills to be signed by means of video-conference facilities (see *Question 18*).

Special rules apply to the execution of a will dealing with immovable property situated in Jersey. For example, the will must be read out loud and, if signed in Jersey, one of the witnesses must be an advocate or solicitor of the Royal Court, or one of a limited number of other categories of witness. If the will is made outside Jersey, one of the witnesses must be a notary public.

Jersey's rules governing the formal validity of a will dealing with movable property vary depending on the nationality; residence and domicile of the testator (see *Question 16*).

Electronic Wills

18. Is it possible for a will to be made electronically? What are the formalities for making and executing an electronic will remotely?

It is presently possible for a will to be made electronically in Jersey.

In April 2020, various temporary changes were made to the rules regarding the execution of wills and the procedures for obtaining a grant of probate/letters of administration in Jersey in light of the COVID-19 pandemic. The Covid-19 (Signing of Instruments) (Jersey) Regulations 2020, which came into force on 23 April 2020, permit wills to be witnessed and oaths to be given over an audio-visual link.

The procedure for witnessing a will over an audio-visual link is relatively straightforward. The criteria are as follows:

- The party who is carrying out the action under the relevant enactment (Person) and the witness must be able to see one another over an audio-visual link.
- The witness must be able to identify the Person, either through having prior knowledge of the Person or by seeing their photo ID over the audio-visual link.
- The witness must see the Person sign the document.
- The witness must make sure that the document signed by the Person is the document in question.

These regulations are due to remain in force until 31 October 2021 and may be extended beyond that date.

The Royal Court's Probate Division generally asks an applicant for a grant of probate/letters of administration to use the Starleaf audio-video conference platform.

Redirecting Entitlements

19. What rules apply if beneficiaries redirect their entitlements?

It is possible to make a variation of a testamentary document. The Royal Court can, with the consent of all parties who in its opinion should be consulted, having regard only to the interest of the

beneficiaries or heirs interested in the part of the estate affected by the order:

- Vary any disposition of the movable estate of the deceased person.
- Provide that any such variation has effect as if it were a disposition effected by the will of the deceased person under the law of intestacy.
- Direct to whom and in what manner the movable estate of the deceased person is distributed.

(*Probate Law*.)

The powers mentioned in the first and second bullet points above are intended to permit the Royal Court to sanction a deed of family arrangement, within two years after the death of the deceased person. The power under the third bullet point above merely restates the power which the Royal Court has always exercised, that is, to carve up the movable estate by consent between all of the interested parties, without the need for a complicated or expensive trial of the issues.

Validity of Foreign Wills and Foreign Grants of Probate

20. To what extent are wills made in another jurisdiction recognised as valid/enforced in your jurisdiction? Does your jurisdiction recognise a foreign grant of probate (or its equivalent) or are further formalities required?

For the rules governing the formal validity of a testamentary document under Jersey law see *Question 16*.

Validity of Foreign Wills

The original will is normally retained by the court of the country where it has first been proved. The Jersey court is usually satisfied with a copy of the original will, sealed and certified by the court where it was first proved, together with the sealed and certified copy of the grant of probate by that court. The grant of probate of the foreign court normally states where the deceased died domiciled. The fact that the foreign court has granted probate of the will is normally sufficient evidence for the Jersey court as to the validity of the will, under the law of the testator's domicile.

The same practice applies to the grant of letters of administration. The Jersey court will accept a copy of the grant of the letters of administration, or equivalent, sealed and certified by the court where the original grant was obtained. The administrator who obtained the original grant in the jurisdiction where the deceased was domiciled will not normally make a personal appearance before the Judicial Greffier of the Royal Court to swear the administrator's oath. This problem can be overcome if he/she uses the "fast-track" procedure (see *below*), or if he/she appoints an attorney administrator to attend before the Judicial Greffier and swear the oath on his/her behalf.

Validity of Foreign Grants of Probate

Jersey recognises a foreign grant of probate (or its equivalent). There is a "fast-track" procedure, so that where the deceased dies domiciled in England, Wales, Scotland, Northern Ireland, the Isle of Man or Guernsey, and a grant has been obtained in that jurisdiction, the executor, administrator or representative lawyer can appoint a Jersey-resident lawyer or trust corporation as an agent, to act as attorney executor or attorney administrator. The applicant can swear the appropriate oath in his/her home jurisdiction, avoiding the need for producing a power of attorney and personal attendance before the Royal Court of the Jersey resident lawyer or the trust corporation representative. In practice, "fast-track" applications are simply delivered by the agent in Jersey to the Royal Court for processing.

Death of Foreign Nationals

21. Are there any relevant practical estate administration issues if foreign nationals die in your jurisdiction?

Jersey has laws and regulations relating to:

- Death certificates and burial arrangements.
- The use of bodily parts for medical purposes.
- Inquests, post-mortems and fatal accidents.

Death notices and claims notices can be advertised in the local newspaper, the Jersey Evening Post.

Jersey currently has three firms of funeral directors who can assist with the formalities, including repatriation of the body.

Administering the Estate

22. Who is responsible for administering the estate and in whom does it initially vest?

Responsibility for Administering

See *Question 16*.

Vesting

As discussed in *Question 16*, ownership of any Jersey immovable property vests immediately by operation of law in the person(s) entitled to that property by will or on intestacy. While any movable property situated in Jersey would technically vest in the heirs on death, the rights of those heirs is now limited by statute as the Probate Law provides that the production of a grant of probate or letters of administration is necessary to establish right to recover or receive the movable estate in Jersey of a deceased person.

23. What is the procedure on death in your jurisdiction for tax and other purposes in relation to establishing title and gathering in assets (including any particular considerations for non-resident executors), paying the necessary taxes and distributing the estate?

It is the responsibility of the person who has received the grant of representation or the letters of administration from the Royal Court to administer the movable property belonging to the deceased person. Therefore, the executor or administrator is responsible for:

- Gathering in the assets belonging to the deceased.
- Paying any taxes or expenses of the deceased and/or the deceased's estate.
- Distributing the net movable estate to the persons entitled to it.

Establishing title and Gathering in Assets

There are no formal procedures in Jersey for the establishment of title and the gathering in of assets.

Procedure for Paying Taxes

There are no formal procedures in Jersey for paying of the deceased's taxes.

Distributing the Estate

There are no formal procedures in Jersey for governing the distribution of the estate.

24. Are there any time limits/restrictions/valuation issues that are particularly relevant to an estate with an element in another jurisdiction?

Any creditor of the deceased person can claim against the executor/administrator to recover sums due, within a year and a day from the date of the grant of probate/letters of administration (as applicable) (Wills and Successions (Jersey) Law 1993). Therefore, it is customary for any executor/administrator to defer the final distribution of the deceased's net movable estate until the period of one year and one day has expired. This time limit applies equally to estates with a foreign element, as well as to the estates of any Jersey-domiciled individuals.

25. Is it possible for a beneficiary to challenge a will/the executors/the administrators?

It is possible for a beneficiary to challenge a will/the executors/the administrators. Where there is a dispute or potential dispute as to who may be entitled to apply for grant of probate or letters of administration, it is possible for an interested party to enter a caveat. This can be done on payment of a small fee to the Judicial Greffier. It will then prevent the grant of probate/letters of administration to any person, until the matter can be considered by the court or the caveat has expired or been withdrawn. A caveat expires after six months, but can be renewed indefinitely for further six-month periods. Any person whose application has been stopped by a caveat can apply to the Royal Court to lift the caveat by a summons served on the caveator, supported by an affidavit verifying the facts on which the application is based.

The Judicial Greffier can, on his/her own initiative, refer applications to the Royal Court for directions. In this case, the court can either:

- Issue the appropriate directions to the Judicial Greffier.
- Prevent the Judicial Greffier from taking further proceedings. In this case, the person applying for the grant/letters must apply to the court by an *ex parte* application. In such an application, the court can order persons to be convened, evidence to be taken and enquiries to be made as it deems necessary, and make an order as required.

If a beneficiary has a grievance about the way the executor/administrator is performing his/her duties, the beneficiary can apply to the Royal Court to bring the matter to the court's attention. The application is normally made *ex parte*, supported by an affidavit.

The beneficiary can also challenge a will on the grounds that it lacked formal or essential validity. Any such challenge is started by a simple summons, which must be served on the executor within a year and a day from the grant of probate.

If Jersey's forced heirship regime (see Question 26) has been infringed by the will of a Jersey domiciled individual, the testamentary instrument can be challenged by the widow and/or heirs of the deceased, by simple summons served on the executor. The challenge must be made within one year and a day from the grant of probate.

SUCCESSION REGIMES

26. What is the succession regime in your jurisdiction (for example, is there a forced heirship regime)?

Immovable Property

Immovable property in Jersey is not subject to any forced heirship regime. A testator can leave his/her Jersey immovable property by will almost entirely as he/she wishes.

However, for any estates which open on or after 1 January 2014, in the case of a married person or civil partner, his widow/her widower/surviving civil partner has a right of, or equivalent to, *douaire* (dower) (that is, a life interest in one-third of the deceased spouse's/deceased civil partner's immovable property at the date of the deceased person's death), which ranks in priority to any dispositions made by the will (see the Wills and Successions (Amendment No 2) (Jersey) Law 2013 which came into force on 1 January 2014).

Otherwise, the heirs have no right to challenge or set aside any gifts of immovable property made by the testator by will, and can be totally disinherited in relation to immovable property.

Movable Property

Jersey law has a forced heirship regime relating to the movable property of a person domiciled in Jersey (Wills and Successions (Jersey) Law 1993 (1993 Law)).

The ability of persons domiciled in Jersey to dispose of movable estate is restricted:

- If a person is survived by a spouse and issue, he or she only has a completely free power of disposition by will over one-third of his or her net movable estate (1993 Law). The surviving spouse has an indefeasible claim to the household effects (as defined in the 1993 Law) and one-third of the rest of the net movable estate, and the issue can claim a one-third share divided between them in equal shares *per stirpes*. The respective shares of the surviving spouse and the issue are known as the *portion légitime*.
- If a person leaves issue but no spouse, he or she is only entitled to dispose freely of one-third of his or her movable property. The issue is entitled to claim as *légitime* two-thirds of that movable estate between themselves, in equal shares *per stirpes*.
- If a person leaves a spouse but no issue, the surviving spouse is entitled to claim the household effects and two-thirds of the rest of the net movable estate. The person has free power of disposition over the other third.

Forced Heirship Regimes

27. What are the main characteristics of the forced heirship regime, if any, in your jurisdiction?

Avoiding the Regime

Jersey-domiciled testators sometimes seek to avoid the rules of *légitime* by converting all of their movable property into immovable property or by changing their domicile.

Joint accounts or jointly owned property are sometimes used to circumvent the forced heirship rules, and to avoid the time and expense of taking out a grant of probate/letters of administration. Typically, a husband and wife place all their movables in their joint names, expecting that on the death of the first the property will pass to the survivor by operation of law. Such arrangements only appear to succeed because they are not questioned.

Although the point has never been finally determined by the Jersey court, one authority suggests that a deliberate attempt by a Jersey-domiciled person to evade the *légitime* rules, for example, making an *inter vivos* (lifetime) settlement of property, gives rise to a cause of action by the heirs-at-law (*Robertson (nee Cowan) v MacKay v Lazard Trustee Company (C.I.) Limited (1994) JLR 103*, a case decided on another point).

In addition, a Jersey proper law trust or a Jersey foundation settled/founded by a Jersey domiciled person, with the intention to evade the *légitime* rules, could possibly be set aside by the Jersey court (*Trusts (Jersey) Law 1984* and the *Foundations (Jersey) Law 2009*).

Assets Received by Beneficiaries in other Jurisdictions

Jersey's forced heirship regime applies only to the movable estate of a person who was domiciled in Jersey at the date of his/her death.

Mandatory or Variable

The forced heirship regime described above is variable in the sense that the onus is on the surviving spouse or issue to claim his *légitime*. If no claim is made within a year and a day from the grant of probate then the terms of the deceased's testamentary document will stand.

Real Estate or other Assets Owned by Foreign Nationals

28. Are real estate or other assets owned by a foreign national subject to your succession laws or the laws of the foreign national's original country?

As a matter of Jersey's private international law:

- The law governing the succession of a person's movable estate is generally determined in accordance with that person's domicile at the date of his/her death.
- The law regarding the succession of any immovable property is generally determined by the applicable law where the immovable property is situated.

29. Do your courts apply the doctrine of *renvoi* in relation to succession to immovable property?

Jersey's private international law generally adopts and follows English common law principles. Any English cases regarding the doctrine of *renvoi* or reference back have persuasive authority in the Jersey Court.

INTESTACY

30. What different succession rules, if any, apply to the intestate?

Immovable Property

Generally, immovable property situated in Jersey of a person dying intestate devolves, subject to exceptions, to the heirs at law in equal shares and as tenants in common.

One exception relates to the inheritance of the matrimonial home (a defined term):

- If a person dies intestate as to the matrimonial home, leaving a spouse but no issue surviving him/her, the surviving spouse inherits the matrimonial home absolutely.
- If a person dies intestate as to the matrimonial home leaving a spouse and issue surviving him/her, the surviving spouse is

entitled to a statutory right of life enjoyment of the matrimonial home. The reversion of the matrimonial home passes in equal shares to the surviving spouse and each of the deceased's children.

Movable Property

The movable estate of a person dying intestate is subject to different rules:

- If a spouse dies intestate as to movable estate, leaving a surviving spouse but no issue, the surviving spouse takes the whole of the net movable estate.
- If the deceased spouse leaves a surviving spouse and issue:
 - the surviving spouse is entitled to the household effects (a defined term), the other movable estate to the value of GBP30,000 and half of the rest of the net movable estate; and
 - the issue takes the other half of the rest of the net movable estate.

If a person dies leaving neither a surviving spouse nor issue, the movable estate devolves to that person's nearest blood relatives in equal shares *per stirpes*. If there are no heirs, the heir's share falls to the Crown.

31. Is it possible for beneficiaries to challenge the adequacy of their provision under the intestacy rules?

It is not possible for beneficiaries to challenge the adequacy of their provision under Jersey's intestacy rules.

TRUSTS

32. Are trusts (or an alternative structure) recognised in your jurisdiction?

Trusts are recognised in Jersey. In addition, Jersey has introduced the foundation in 2009 (*see Question 12*).

Type of Trust and Taxation

A trustee resident in Jersey is *prima facie* assessable to Jersey income tax. However, the Comptroller of Taxes is generally willing to look through the trust, to assess any Jersey resident beneficiaries directly on their share of the income arising within the trust fund. Where the trustee is resident in Jersey but none of the beneficiaries are resident in Jersey (which is very common), the Comptroller does not generally seek to subject the trustee or any of the beneficiaries to Jersey income tax.

If the trustee is not resident in Jersey but one or more of the beneficiaries are resident in Jersey, any Jersey resident beneficiary is liable to pay Jersey income tax on income he/she receives from the trust fund.

A foundation incorporated under Jersey law is taxed under Jersey's "zero/ten" regime (*see Question 6*). However, the proposed constitution of any foundation which includes Jersey resident individuals as beneficiaries of its objects must be submitted to the Comptroller of Taxes for pre-clearance.

Residence of Trusts

For rules regarding the residence status of the trustee and the beneficiaries, *see Question 2*.

33. Does your jurisdiction maintain a central register of trusts?

There is no central register of trusts in Jersey.

34. Does your jurisdiction recognise trusts that are governed by another jurisdiction's laws and are created for foreign persons?

Jersey does recognise trusts governed by another jurisdiction's law and created for foreign persons. A non-Jersey proper law trust is regarded as being governed by, and is interpreted in accordance with, its proper law (*Article 49, Trusts (Jersey) Law 1984*). However, a non-Jersey proper law trust is unenforceable in Jersey if it either:

- Purports to do anything contrary to Jersey law.
- Applies directly to Jersey immovable property.
- Is immoral or contrary to public policy.

The Jersey Court has jurisdiction where one of the following applies:

- The trust is a Jersey proper law trust.
- The trustee of a non-Jersey proper law trust is resident in Jersey.
- Any trust property of a non-Jersey proper trust is situated in Jersey.
- The administration of any trust property of a non-Jersey proper law trust is carried on in Jersey.

(*Article 5, Trusts (Jersey) Law 1984*.)

35. What are the tax consequences of trustees (for example, of an English trust) becoming resident in/leaving your jurisdiction?

As long as none of the beneficiaries of the trust are resident in Jersey, there are no tax consequences of importing/exporting a trust to or from Jersey.

If any of the beneficiaries of the trust are resident in Jersey, certain rules apply (*see Question 32*).

36. If your jurisdiction has its own trust law, does the law provide specifically for the creation of non-charitable purpose trusts? Does the law restrict the perpetuity period within which gifts in trusts must vest, or the period during which income may be accumulated? Can the trust document restrict the beneficiaries' rights to information about the trust?

Purpose Trusts

The Trusts (Jersey) Law 1984 provides specifically for the creation of non-charitable purpose trusts. In addition, a Jersey law foundation may have non-charitable purposes as its objects.

Perpetuities and Accumulations

Article 15 of the Trusts (Jersey) Law 1984 provides that no rule against perpetuities or excessive accumulations can apply to a Jersey proper law trust or to any advancement, payment or application of assets from such a trust. Trusts and foundations of unlimited duration are permitted under Jersey law.

Beneficiaries' Rights to Information

Generally, a beneficiary of a Jersey proper law trust has a statutory right to require the trustee to disclose the trust accounts (a term widely construed by the Jersey court). However, this right is expressly subject to the terms of a trust and any overriding order of the Jersey court. The Trusts (Jersey) Law 1984 has however recently been amended and now expressly provides that:

- The terms of a Jersey proper law trust can restrict a beneficiary's right to information.
- A trustee may refuse disclosure where it is satisfied that such disclosure would not be for the benefit of one or more of the beneficiaries or the beneficiaries as a whole.

A foundation is not required to provide any person (whether or not a beneficiary) with any information concerning the foundation, except as required by the constitution of the foundation, the Foundations' Law itself or by order of the Jersey court (Foundations (Jersey) Law 2009). However, the council of a foundation can be required to account to the foundation's guardian, for the way in which the council has administered the foundation's assets and acted to further the foundation's objects.

37. Does the law in your jurisdiction recognise claims against trust assets by the spouse/civil partner of a settlor or beneficiary on the dissolution of the marriage/partnership?

See *Question 38*.

38. To what extent does the law of your jurisdiction allow trusts to be used to shelter assets from the creditors of a settlor or beneficiary?

Jersey has chosen not to adopt specific asset protection or divorce protection legislation. As a result, the effectiveness of a trust in Jersey to protect assets depends primarily on its validity. In the past, trusts have been set aside on the grounds of invalidity or sham. Any future attempts to attack a Jersey proper law trust in this way are now likely to be very difficult, due to a recent change to the law.

Modern Jersey law has its origins in customary law (13th century *Grand Coutumier de Normandie*), which has since been modified by commentators, legislation and practice. Customary law recognised the power of the Jersey court to set aside transactions which were fraudulent against creditors (but not future creditors). The Jersey court has claimed the power to set aside transactions (including trusts) intended to defeat or prejudice creditors.

It is now settled law that existing (but not unknown future) creditors can bring a claim (*Pauline Action*), to set aside a transfer undertaken to prejudice them. This claim is restitutionary. It is sufficient for the debtor to show a substantial purpose. The *Pauline Action* therefore covers cases where creditors wish to set aside a trust over which the Jersey Court has jurisdiction.

In 2006, the Trusts (Jersey) Law 1984 was amended to include provisions dealing with the enforcement of foreign judgments against Jersey proper law trusts. Jersey law is now only applied to determine certain legal issues in relation to such trusts (for example, the validity of a trust, validity of any transfer of property to a trust, and settlor's capacity) (*see in particular Article 9, Trusts (Jersey) Law 1984*).

The main purpose of these provisions is to ensure that local trusts are not easily challenged or set aside by foreign claimants, in the local courts or when the local court is asked to recognise or give effect to an overseas court order affecting a local trust.

Much comfort can be taken from a judgment of the Jersey Royal Court (*Mubarak v Mubarak* [2008] JRC 136). This case involved a claim against trust assets by the spouse of a beneficiary on the dissolution of their marriage. It held that:

- Due to Article 9 of the Trusts (Jersey) Law 1984, a Jersey court cannot enforce a judgment of a foreign court applying foreign (non-Jersey) law ordering the variation or alteration of a Jersey trust.
- A Jersey court cannot give directions which would have the effect of achieving the objectives of the foreign court.

This judgment has significantly strengthened the view that Jersey courts can be expected to apply Article 9 of the Trusts (Jersey) Law 1984 more robustly, thereby retaining its effective jurisdiction over Jersey proper law trusts.

CHARITIES

39. Are charities recognised in your jurisdiction?

Charities have been recognised and have operated in Jersey for many years. Until recently, the definition of "charity" was found in the Income Tax (Jersey) Law 1961 (Income Tax Law) and was drawn from the 1601 Statute of Elizabeth. The law in this area has been completely updated and overhauled by the introduction of the Charities (Jersey) Law 2014 (Charities Law), which came into force in stages, the final stage being on 1 May 2018. The Charities Law has:

- Introduced a new statutory definition of "charitable purposes" based on the definition found in the Charities and Trustee Investment (Scotland) Act 2005.
- Provided that a "charity" must only have charitable purposes and provide public benefit, in Jersey or elsewhere, to a reasonable degree.
- Created the office of Jersey Charity Commissioner (that is, the person responsible for determining if an entity is suitable for registration on the register as a charity), and a Tribunal to hear appeals against the Jersey Charity Commissioner's decisions.
- Established a new register of charities and a registration process.
- Provided that only a registered charity is able to access charitable reliefs and is entitled to call itself a charity.
- Divided registered charities into three distinct classes on the register, namely:
 - restricted charities (ones which do not solicit donations from the general public);
 - general charities (ones which do not meet the requirements to be restricted charities); and
 - historic charities (ones which were previously registered charities but which have been delisted).
- Provided that all registered charities must furnish the Jersey Charity Commissioner with certain key items of information, but restricted the amount of information which is placed in the public domain in the case of restricted and historic charities.
- Given the Jersey Charity Commissioner the power to determine whether a governor is a fit and proper person to act as a governor of a charity.
- Provided that each governor of a charity must ensure that the charity acts in accordance with the charity's purposes and delivers public benefit.
- Placed restrictions on the use of the terms "charity" and "charitable". Only registered charities are now able to call

themselves "charities" and it is intended that regulations will be developed restricting the use of the term "charitable" by non-registered entities when undertaking public fund-raising activities.

40. If charities are recognised in your jurisdiction, how can an individual donor set up a charity?

Prior to 1 May 2018 there was no central public register of charities and no single body in Jersey which undertook the registration and oversight of the activities of charities in Jersey, but this has now changed (see *Question 39*).

Under the Charities Law, the Jersey Charity Commission is now primarily responsible for the regulation and oversight of charities in Jersey. An individual donor is now required to comply with the requirements set out in that statute (see *Question 39*). Only registered charities which comply with the requirements of the Charities Law are able to access charitable tax reliefs (see *Question 42*) and are entitled to call themselves a charity.

In the past, HM's Attorney General in Jersey was usually convened in any legal proceedings involving any charity in Jersey, or could initiate proceedings himself/herself if he/she had a concern about a particular charity's activities. This convention and right have survived the introduction of the Charities Law.

41. What are the main regulatory authorities for charitable organisations? What are their powers of investigation/audit/sanctions?

The Jersey Charities Commissioner (that is, the official primarily responsible for the oversight of charities in Jersey) has the statutory right to demand information from a registered or formerly registered charity and/or a governor or former governor of a charity. It is a criminal offence to either/both:

- Fail to comply with any such demand without a reasonable excuse.
- Knowingly providing false information in response to any request.

The Jersey Charities Commission also has the statutory power to compel a registered charity and/or a governor of a charity to take certain steps to remedy certain acts and omissions.

Lastly, the Commission and HM's Attorney General each have the right to apply to the Royal Court for an order requiring a charity to suspend or remove a governor from office.

42. What are the benefits for individuals when setting up charitable organisations?

The Charities Law has removed the historic requirement for any charity, foundation with charitable purposes or NPOs established in Jersey to apply to the Comptroller of Taxes for an exemption from various taxes and duties. Under the new regime, which came into force on 1 May 2018, an entity will be entitled to all the applicable charitable reliefs (currently exemption from income tax, relief from GST, stamp duty and land transaction tax and repayment of income tax on donations made under the lump sum donation scheme and the deed of covenant schemes) as soon as it becomes a registered charity. Transitional arrangements apply for a limited period of time for charities which were in existence prior to 1 May 2018. Entities with charitable purposes which do not elect to become registered charities can still apply to the Comptroller for

Taxes for exemption from income tax but will not be entitled to any of the other charitable reliefs.

Under the Charities Law, a foreign charity is permitted to apply to become a Jersey registered charity if it carries out substantial activity in Jersey and has a principal address in Jersey. A foreign charity, which is not registered in Jersey, can call itself a charity if it is classed as an "excepted foreign charity". To be an "excepted foreign charity" it must be established under the laws of the UK, or in a jurisdiction recognised by the Chief Minister of the States of Jersey, and entitled to call itself a charity under the laws applicable in that jurisdiction. A foreign charity which is not an "excepted foreign charity" cannot call itself a charity while operating in Jersey. A foreign charity, which is not registered in Jersey, cannot receive any form of charitable tax reliefs, unless it falls within the current Income Tax Law arrangements for foreign charities.

43. What are the main disadvantages of setting up a charitable organisation?

Jersey now has a modern and up-to-date regime for the registration and oversight of charities which operate in or from within the Island.

There are no major disadvantages in setting up a charitable organisation in Jersey as such, but anyone considering doing so must first decide whether or not to apply to register the charitable organisation.

Only charities which have been registered and which comply with all of the requirements of the Charities Law on an on-going basis are able to access charitable tax reliefs and are entitled to call themselves a charity. Conversely, any entity with charitable purposes which does not elect to become a registered charity can still apply to the Comptroller for Taxes for exemption from income tax. However, such an organisation will not be entitled to any of the other charitable reliefs and will not be able to call itself a charity.

44. What are the benefits to individual donors making donations to charitable organisations?

Jersey-registered charities are entitled to reclaim the tax paid on any lump sum donations and payments under a covenant made to them by any Jersey-resident taxpayer.

OWNERSHIP AND FAMILIAL RELATIONSHIPS

Co-ownership

45. What are the laws regarding co-ownership and how do they impact on taxes, succession and estate administration?

Jersey law recognises two forms of co-ownership, namely ownership-in-common and joint ownership. The difference between them occurs on the death of one of the co-owners:

- **Ownership-in-common.** On the death of one of the co-owners, his/her share passes to his/her heirs, and the share of the other co-owner(s) is unaffected.
- **Joint ownership.** The share of the deceased person automatically accrues to the surviving co-owner(s), by operation of law.

Joint ownership arrangements are sometimes used to circumvent the forced heirship rules, and to avoid the time and expense of taking out a grant of probate/letters of administration (see *Question 27*).

Familial Relationships

46. What matrimonial regimes in trust or succession law exist in your jurisdiction? Are the rights of cohabitants/civil partners in real estate or other assets protected by law?

At present, Jersey law does not afford cohabitants any particular rights relating to property or other assets. As regards civil partnerships, Jersey introduced legislation which recognises and gives effect thereto on 2 April 2012. The Civil Partnership (Jersey) Law 2012 affords civil partners, broadly speaking, the same rights (including all civil, fiscal and succession rights) as a married couple.

47. Is there a form of recognised relationship for same-sex couples and how are they treated for tax and succession purposes?

There is a form of recognised relationship for same-sex couples. The Civil Partnership (Jersey) Law 2012 places civil partners on essentially the same footing as a married couple for tax and succession purposes (see *Question 46*).

48. How are the following terms defined in law: married, divorced, adopted legitimate, civil partnership?

Married

Under Jersey customary law, marriage is the consensual union of a man to a woman to the exclusion of all others. The Marriage and Civil Status (Jersey) Law 2001 was however amended on 1 July 2018 to permit two persons of the same sex to marry or for civil partners to marry by converting their civil partnership to a marriage. To be formally valid under Jersey law, a marriage must be solemnised in a ceremony conducted under the Marriage and Civil Status (Jersey) Law 2001.

Divorced

In general terms, divorced is the status afforded to a person whose marriage has been dissolved by a court of competent jurisdiction. The dissolution and nullity of marriage under Jersey law are governed by the Matrimonial Causes (Jersey) Law 1949.

Adopted

Adoption is governed by the Adoption (Jersey) Law 1961. An adopted child is regarded as being the legitimate child of the adopter(s) exclusively for all purposes.

Legitimate

Under customary law (as modified by the Legitimacy (Jersey) Law 1963), a legitimate child is one who has been born in lawful wedlock. On 29 January 2011, the Wills and Successions (Jersey) Law 1993 was amended to ensure equality of succession rights between legitimate and illegitimate issue. Under Jersey's customary law, an illegitimate child becomes legitimated if his/her parents subsequently marry.

Civil partnership

A civil partnership is a relationship between two people of the same sex which:

- Is formed in accordance with Jersey's rules regarding registration.
- They have formed by virtue of having registered an "overseas relationship" (a defined term).

(Article 2, *Civil Partnership (Jersey) Law 2012*.)

Minority

49. What rules apply during the period when an heir is a minor? Can a minor own assets and who can deal with those assets on the minor's behalf?

The age of majority is 18 years under Jersey law.

Jersey has a *tutelle* procedure, derived from Norman customary law and now governed by the Children's Property and Tuteurs (Jersey) Law 2016, which protects the interests of children considered too young to manage their own affairs. Generally, a *tutelle* must be appointed in relation to property owned by or due to a minor if the property is or includes immovable property or movable property that has a value, in the aggregate, which exceeds GBP25,000. The Royal Court appoints a *tuteur/tutrice* (who by customary law must be a Jersey resident) to take responsibility for the minor's property. The *tuteur/tutrice* must keep proper and accurate accounts of the minor's property, and seek the Royal Court's prior consent to certain transactions concerning the minor's immovable property. The *tutelle* normally ends when the minor reaches the age of 18 years.

CAPACITY AND POWER OF ATTORNEY

50. What procedures apply when a person loses capacity? Does your jurisdiction recognise powers of attorney (or their equivalent) made under the law of other jurisdictions?

The Royal Court has several statutory powers including the power to appoint a delegate in respect of a person (a patient) who lacks capacity (Capacity and Self-Determination (Jersey) Law 2016 which came into force on 1 October 2018). The extent of authority of the delegate can be stipulated by the Royal Court at the time of appointment, allowing for extra flexibility where desirable or providing tailor-made limitations if necessary, given the particular circumstances of the patient and how best to serve their interests. The application to the Royal Court may be brought by any one of a long list of applicants including HM's Attorney General and the patient's spouse/civil partner, child(ren), parents or siblings. Once

appointed by the Royal Court, the delegate will be obliged to act within the scope of his/her appointment, but with the powers and duties imposed by the Royal Court. The appointment of the delegate ends on the death of the delegate or patient, or upon the delegate's resignation.

With effect from 1 October 2018 Jersey residents have the ability put in place arrangements (by means of a lasting powers of attorney) for the future of their finances and welfare should they not have the capacity to make certain decisions for themselves in the future.

The Jersey Courts recognise and give effect to powers of attorney (or their equivalent) made under the law of another jurisdiction, provided the power has first been approved/ratified by a foreign court with the requisite jurisdiction.

PROPOSALS FOR REFORM

51. Are there any proposals to reform private client law in your jurisdiction?

On 6 January 2021, the Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020 came into force. This law establishes a new, central register of beneficial owners and significant persons of various corporate entities (namely companies, foundations, incorporated limited partnerships, separate limited partnerships, limited liability partnerships and, in time, limited liability companies). All "in scope" entities under this law have been required to:

- Appoint a nominated person by or before 6 April 2021.
- File their first annual confirmation statement (that is, the document setting out the details of their significant persons and beneficial owners) by or before 31 October 2021 (although this date may be subject to change).

Details of all "significant persons" will be placed in the public domain before the end of 2021 in all likelihood. Any information on the beneficial owners will continue not to be made publicly available.

The Limited Liability Companies (Jersey) Law 2018 is expected to come into force at some point in late 2021. Limited liability companies (LLCs) incorporated under this law will have legal personality (can sue and be sued and own assets in their own name) but will not be a body corporate, and benefit from limited liability. The operation of a LLC will be governed by a LLC agreement which will ordinarily not be matter of public record. There will be the ability to create separate series consisting of separate members, managers, interests or assets each of which will have separate legal personality.

No significant changes are expected to be made to Jersey's current tax regime for the foreseeable future.

Practical Law Contributor Profile

Keith Dixon, Partner

Carey Olsen

T +44 1534 822 380

F +44 1534 887 744

E keith.dixon@careyolsen.com

W www.careyolsen.com

Professional qualifications. Barrister, England and Wales, 1994 (not practising); Advocate of the Royal Court of Jersey, 1997; Notary Public, 2014

Areas of Practice. Private client; estate planning; non-contentious fiduciary; private and commercial trusts and foundations; pensions; employee benefit trusts.

Recent transactions. Counsel for the representors in *In re Giannco Investments Limited* (Royal Court judgment, 16 April 2021), a case which confirmed the Royal Court power to vary dispositions made to a surviving co-owner under the rules governing the joint ownership of property.