



The
**LEGAL
500**

EXCLUSIVE CONTRIBUTOR
COUNTRY
COMPARATIVE
GUIDES
2021

The Legal 500
Private Client
comparative guide – Q&A
Jersey

CAREY OLSEN

Questions

1. Which factors bring an individual within the scope of tax on income and capital gains?
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?
3. Are withholding taxes relevant to individuals and, if so, how, in what circumstances and at what rates do they apply?
4. 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?
5. 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?
6. 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 (e.g. business or agricultural assets), and how do any such reliefs apply?
7. 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?
8. 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?
9. Are taxes other than those described above imposed on individuals and, if so, how do they apply?
10. Is there an advantageous tax regime for individuals who have recently arrived in or are only partially connected with the jurisdiction?
11. What steps might an individual be advised to consider before establishing residence in (or becoming otherwise connected for tax purposes with) the jurisdiction?
12. What are the main rules of succession, and what are the scope and effect of any rules of forced heirship?
13. Is there a special regime for matrimonial property or the property of a civil partnership, and how does that regime affect succession?
14. What factors cause the succession law of the jurisdiction to apply on the death of an individual?
15. 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?
16. 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?
17. How is the estate of a deceased individual administered and who is responsible for collecting in assets, paying debts, and distributing to beneficiaries?
18. 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?
19. How is any such structure constituted, what are the main rules that govern it, and what requirements are there for registration with or disclosure to any authority or regulator?
20. What information is required to be made available to the public regarding such structures and the ultimate beneficial ownership or control of such structures or of private assets generally?
21. How are such structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?
22. Are foreign trusts, private foundations etc recognised?
23. How are such foreign structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?
24. To what extent can trusts, private foundations etc be used to shelter assets from the creditors of a settlor or beneficiary of the structure?
25. What provision can be made to hold and manage assets for minor children and grandchildren?
26. 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?
27. What forms of charitable trust, charitable company, or philanthropic foundation are commonly established by individuals, and how is this done?
28. What important legislative changes do you anticipate so far as they affect your advice to private clients?

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

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

Capital gains are not subject to tax in Jersey. However, any attempts to turn income into capital artificially will probably be challenged by the Comptroller of Taxes under blanket anti-avoidance provisions.

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 standard rate of income tax for an individual is 20%, a rate which has applied since 1940.

The official tax year in Jersey starts on 1 January and ends on 31 December each calendar year. An individual may file an annual tax return either online or by means of a paper return. The deadline is 31 July in the year following the relevant tax year.

Income tax in Jersey is collected in different ways depending on whether the tax payer 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.

There are no particular rules affecting temporary 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.

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 but this is set to change. With effect from 1 January 2021 all prior year basis taxpayers will be moved to a current year basis. The 2019 tax bill for such taxpayers will be frozen and paid in the future under arrangements which have yet to be announced. 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.

Capital gains are not subject to tax in Jersey.

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

Salaries paid to a Jersey resident or non-resident are not subject to withholding tax, although as set out in the answer to Question 2 income tax is collected by a deduction from an employed taxpayer's salary under ITIS, or by payments made on account.

Dividends paid to a Jersey resident or non-resident are not subject to withholding tax.

Interest paid by a company to a Jersey resident or non-resident is not subject to withholding tax. In particular, interest paid by a Jersey bank is not subject to withholding tax. However, interest paid by a Jersey resident individual may be subject to a 20% withholding tax in certain cases.

Royalties paid by a company to a Jersey resident or non-resident are not subject to withholding tax but royalties paid by a Jersey resident individual may be subject to a 20% withholding tax in certain circumstances.

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.

4. [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?](#)

There is no wealth tax regime in Jersey.

5. [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 inheritance or gift tax regime in Jersey.

6. [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 \(e.g. business or agricultural assets\), and how do any such reliefs apply?](#)

There is no inheritance or gift tax regime in Jersey. There is no tax relief available on gifts save that a Jersey income

tax payer may make tax free lump sum donations to charities which are registered with the Jersey Charity Commission.

7. [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?](#)

Yes, the Comptroller of Taxes in Jersey will grant tax relief to a Jersey income tax payer who makes a lump sum donation to any entity which is registered as charity with the Jersey Charities Commission.

8. [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?](#)

There are no taxes imposed on the purchase of any immovable (real) property in Jersey. However, 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.

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

- The conveyance of immovable property (generally between 2% to 5% for value, payable by the buyer).
- Share transfer transactions involving immovable property in Jersey (generally between 2% to 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. That cap is currently fixed at GBP100,000 of stamp duty for estates having a net value in excess of GBP13,360,000).

9. [Are taxes other than those described above imposed on individuals and, if so, how do they apply?](#)

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.

10. [Is there an advantageous tax regime for individuals who have recently arrived in or are only partially connected with the jurisdiction?](#)

No, there are no particular rules for individuals who have recently arrived in or are only partially connected with Jersey.

Jersey does not impose any exit tax when a person leaves the jurisdiction. 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.

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

As Jersey does not have any capital gains tax it is generally advisable for an individual to convert any income generating investments into ones which will generate capital gains exclusively before taking up residence in the Island. However, any attempts to turn income into capital artificially could potentially be investigated and/or challenged by the Comptroller of Taxes under blanket anti-avoidance provisions after the individual has taken up residence in the Island.

An individual seeking to establish residence in Jersey may also wish to consider settling his/her movable property into a trust or other similar private wealth holding structure so as (a) to reduce the net value of his/her movable estate and consequently the amount of stamp duty which would otherwise be payable on his/her death (see the answer to Question 8) and/or (b) to mitigate the application of Jersey's forced heirship regime (see the answer to Question 12).

12. [What are the main rules of succession, and what are the scope and effect of any rules of forced heirship?](#)

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.

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.

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.

13. [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.

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, exactly the same rights (including all civil, fiscal and succession rights) as a married couple.

14. [What factors cause the succession law of the jurisdiction to apply on the death of an individual?](#)

See the answer to Question 12:

- 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).

15. [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?](#)

Any conflict of law issue would be determined by the Jersey courts in accordance with the principles of private international law as applied by Jersey law, which principles are broadly similar to those accepted under the common law of England. English law concepts such as domicile and the doctrine of renvoi are recognised and form part of Jersey law. English private international case

law would have persuasive but not binding authority in the Jersey courts.

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

In the past the formal validity of a will dealing with any movable property situated in Jersey was assessed by Jersey law exclusively, but this is no longer the case. The Probate (Jersey) Law, 1998 (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.

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.

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 to the testator 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 “qualified witness” (judge, justice of the peace, magistrate, mayor, a barrister or solicitor etc.).

17. [How is the estate of a deceased individual administered and who is responsible for collecting in assets, paying debts, and distributing to beneficiaries?](#)

As discussed in Question 12, 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.

As regards the movable property, 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.

There are no formal procedures in Jersey for the establishment of title, the gathering in of assets, paying of the deceased's taxes and governing the distribution of the estate.

18. [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?](#)

Jersey law permits the creation of a wide variety of entities which may be used to hold, administer and regulate succession to private family wealth, the main ones being companies, trusts, foundations and limited partnerships.

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.
- Incorporated cell companies

Trusts (both inter vivos and will trusts) are routinely used in Jersey for many types of private wealth holding structures. In 2009 Jersey law was changed to permit the incorporation and use of foundations (corporate bodies 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.

In addition, Jersey recognises a number of different forms of partnership all of which are capable of holding private family wealth, including a:

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

19. [How is any such structure constituted, what are the main rules that govern it, and what requirements are there for registration with or disclosure to any authority or regulator?](#)

The incorporation or establishment of any new body corporate in Jersey (company, limited partnership, foundation etc) is made by means of an application to the Companies Registry, a division of the Jersey Financial Services Commission (JFSC), the regulator for financial services in Jersey. The Companies Registrar would ordinarily request information regarding the ultimate beneficial owners of any new body corporate as part of the application process.

The creation of a valid Jersey proper law trust generally does not require any form of application and/or disclosure of information to any authority or regulator, the main exception being the creation of any new unit trust for which the JFSC's approval must usually be sought.

Bodies corporate and express trusts are governed by their own constitutions (the memorandum and articles of association, partnership agreement, charter and regulations and trust instrument in the case of a company, partnership, foundation and trust respectively), any applicable statutes and Jersey law principles.

20. [What information is required to be made available to the public regarding such structures and the ultimate beneficial ownership or control of such structures or of private assets generally?](#)

Although a limited amount of information in relation to any Jersey body corporate must be available to the public via

the Companies Registry's website (www.jerseyfsc.org), in practice it is currently possible to ensure that information which might lead to the identification of the ultimate beneficial owner(s) and/or controllers is kept private.

For example, in the case of a Jersey company, its name, any previous names, registration number, date of incorporation, and current registered office are in the public domain. The names of the shareholder(s) of a Jersey company must be disclosed to the Companies Registry each year in its annual return, a document which may be accessed by the public on the payment of a small fee, but as nominee shareholders are routinely used and the register of directors does not need to be submitted, the name(s) of the ultimate beneficial owner(s) and directors of a Jersey company are rarely, if ever, ascertainable from the publicly available documents and information.

This regime will change with the coming into force of the Financial Services (Disclosure and Provision of Information)(Jersey) Law 2020 on 6 January 2021, a law which will establish a new, central register of beneficial owners and significant persons of certain types of bodies corporate (companies, foundations, incorporated limited partnerships, separate limited partnerships, limited liability companies and limited liability partnerships). The vast majority of information which will be collected under this new regime is already being collected by the JFSC under other, existing regimes. The main change will be that details of all "significant persons" of entities, a term which includes directors, managers etc, will be made public (subject to exceptions) with effect from, it is anticipated, 31 July 2021.

Importantly, information on beneficial owners will continue not be made publicly available under the new regime. A decision on whether and, if so, when and the extent to which such information may be made public will be deferred until a consensus on approach has been reached in the European Union under the EU's Fifth Money Laundering Directive, anticipated to be some time in 2022.

21. [How are such structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?](#)

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.

A trustee resident in Jersey is prima facie assessable to Jersey income tax regardless of the proper law of the trust. 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. 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.

22. [Are foreign trusts, private foundations etc recognised?](#)

Yes, 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.

The Jersey Courts would generally recognise and give effect to any valid non-Jersey body corporate (eg a foreign foundation) pursuant to Jersey's private international law principles.

23. [How are such foreign structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?](#)

A company or foundation incorporated outside Jersey is regarded as not being resident in Jersey unless its business is managed and controlled in Jersey (see the answer to Question 1).

For a trustee which is not resident in Jersey see the answer to Question 21.

24. [To what extent can trusts, private foundations etc be used to shelter assets from the creditors of a settlor or beneficiary of the structure?](#)

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 change to the law in 2006.

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 (the 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 “firewall” 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 Mubarik* [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.

When foundations were first introduced into Jersey law in 2009, similar “firewall” provisions were included in the statute (see Foundations (Jersey) Law, 2009) so that Jersey law is now only applied to determine certain legal issues in relation to any Jersey foundation.

25. [What provision can be made to hold and manage assets for minor children and grandchildren?](#)

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.

It is also possible for property to be held by a trustee under the terms of a valid trust (inter vivos or will trust) for the benefit of one or more minor children or grandchildren. The tax treatment of any such trust is set out in the answer to Question 21.

26. [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?](#)

Yes, it would generally be advisable for a Jersey resident to put in place arrangements for the future of their finances and welfare should they not have the capacity to make certain decisions for themselves in the future. With effect from 1 October 2018 Jersey residents have the ability to make a lasting power of attorney, that is to say a form of attorney which will not be affected by the donor’s subsequent lack of capacity.

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.

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.

27. [What forms of charitable trust, charitable company, or philanthropic foundation are commonly established by individuals, and how is this done?](#)

It is possible to establish a trust, company or foundation which has charitable and/or philanthropic purposes/objects under Jersey law.

Jersey law permits the establishment of trusts which have charitable and/or non-charitable purposes provided that, in the case of the latter, there is an enforcer in place, a person who is under a statutory duty to enforce the trust in relation to its non-charitable purposes. There is no rule against perpetuities under Jersey law and so both types of trust may have a fixed or indefinite duration. An individual would usually establish a Jersey proper law trust which had charitable or non-charitable purposes by means of a written instrument accompanied by the transfer of the initial trust property to the trustee.

A company's memorandum and articles of association may contain one or more charitable/philanthropic objects. Any type of company may be used but in practice a company which is limited by guarantee is most commonly used in this field as, not having any shareholders, it mitigates some of the succession, asset protection and conflict of interest issues which could otherwise arise.

A Jersey foundation may have one or more charitable/philanthropic objects in its charter (a document which must be placed in the public domain) or its regulations (a document which generally may be kept private).

The answer to Question 19 covers the application process for companies and foundations.

28. [What important legislative changes do you anticipate so far as they affect your advice to private clients?](#)

The Limited Liability Companies (Jersey) Law 2018 is expected to come into force at some point in 2020. 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.

The Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020, which is discussed at the answer to Question 20, is due to come into force on 6 January 2021 and private clients would be well advised to review their Jersey structures in advance of the implementation of the key changes.

About Carey Olsen

Carey Olsen is a leading offshore law firm advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey and Jersey from a network of nine international offices.

We provide legal services in relation to all aspects of corporate and finance, trusts and private wealth, investment funds, insolvency, restructuring and dispute resolution.

Our clients include global financial institutions, investment funds, private equity and real estate houses, multinational corporations, public organisations, sovereign wealth funds, high net worth individuals, family offices, directors, trustees and private clients.

We work with leading onshore legal advisers on international transactions and cases involving our jurisdictions.

In the face of opportunities and challenges, our clients know that the advice and guidance they receive from us will be based on a complete understanding of their goals and objectives combined with consistently high levels of client service, technical excellence and commercial insight.

Our Trusts and Private Wealth practice

Carey Olsen has one of the largest trusts and private wealth teams in the offshore world with 50 partners and associates providing advice on the laws of Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey and Jersey to local and international clients and their advisers. Our offices in Hong Kong and Singapore, with growing private wealth practices, also ensure that we are able to advise clients in Asia on both contentious and non-contentious trusts and private wealth matters.

Our global reach, scale and experience means that we are perfectly positioned to assist and advise on the most demanding and complex cases concerning wealth planning and asset protection as well as the more straightforward day-to-day instructions. We understand the longevity of trusts work, which is why we focus on building long-term relationships with our clients and their other advisers.

We represent professional trustees, private individuals and families, banks, financial institutions and charities from all over the world. International law firms and accountancy practices look to us for support on projects that require specialist advice on the laws and regulations of our jurisdictions.

Our lawyers work across a range of structures including private, corporate, charitable, purpose and commercial trusts, foundations, family offices, partnerships and companies. We advise on settlor reserved power trusts, private trust company arrangements, pension and employee benefit schemes, wills and matters of inheritance, international estate planning, regulatory advice and trust-related disputes.

With a fully integrated practice, we also represent trustees, executors and beneficiaries in contentious matters such as breach of trust actions, estate disputes, and other administrative applications that need to be made to the courts. Our contentious trust lawyers have appeared in many significant offshore trust cases to come before the courts, including representing clients before the Privy Council in the UK.

“Its trusts and fiduciary team is in a class of its own”.

Chambers and Partners

Keith Dixon

Partner – Private Client and Trusts, Jersey

D +44 (0)1534 822380

E keith.dixon@careyolsen.com

Elizabeth Le Guillou

Senior Associate – Private Client and Trusts,
Jersey

D +44 (0)1534 822468

E elizabeth.leguillou@careyolsen.com

The Legal 500 & The In-House Lawyer

*Comparative Legal Guide
Jersey: Private Client (4th edition)*

This country-specific Q&A provides an overview to private client laws and regulations that may occur in Jersey.

This Q&A is part of the global guide to Private Client (4th edition).



PLEASE NOTE

Carey Olsen Jersey LLP is registered as a limited liability partnership in Jersey with registered number 80.

This briefing is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such. © Carey Olsen Jersey LLP 2021.



Our offices

Jurisdictions

Bermuda

Carey Olsen Bermuda Limited
Rosebank Centre 5th Floor
11 Bermudiana Road
Pembroke HM 08
Bermuda

T +1 441 542 4500
E bermuda@careyolsen.com

British Virgin Islands

Carey Olsen (BVI) L.P.
Rodus Building
PO Box 3093
Road Town
Tortola VG1110
British Virgin Islands

T +1 284 394 4030
E bvi@careyolsen.com

Cayman Islands

Carey Olsen
PO Box 10008
Willow House
Cricket Square
Grand Cayman KY1-1001
Cayman Islands

T +1 345 749 2000
E cayman@careyolsen.com

Guernsey

Carey Olsen (Guernsey) LLP
PO Box 98
Carey House
Les Banques
St Peter Port
Guernsey GY1 4BZ
Channel Islands

T +44 (0)1481 727272
E guernsey@careyolsen.com

Jersey

Carey Olsen Jersey LLP
47 Esplanade
St Helier
Jersey JE1 0BD
Channel Islands

T +44 (0)1534 888900
E jerseyco@careyolsen.com

International offices

Cape Town

Carey Olsen
Protea Place
40 Dreyer Street
Claremont
Cape Town 7708
South Africa

T +27 21 286 0026
E capetown@careyolsen.com

Hong Kong

Carey Olsen Hong Kong LLP
Suites 3610-13
Jardine House
1 Connaught Place
Central
Hong Kong

T +852 3628 9000
E hongkong@careyolsen.com

London

Carey Olsen LLP
Forum St Paul's
33 Gutter Lane
London EC2V 8AS
United Kingdom

T +44 (0)20 7614 5610
E londonco@careyolsen.com

Singapore

Carey Olsen Singapore LLP
10 Collyer Quay #24-08
Ocean Financial Centre
Singapore 049315

T +65 6911 8310
E singapore@careyolsen.com

OFFSHORE LAW SPECIALISTS

BERMUDA BRITISH VIRGIN ISLANDS CAYMAN ISLANDS GUERNSEY JERSEY
CAPE TOWN HONG KONG LONDON SINGAPORE

[careyolsen.com](https://www.careyolsen.com)