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# Private client law in Guernsey: overview

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## 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 tax year of charge runs from 1 January to 31 December (year of charge).

Paper returns are no longer issued to taxpayers. A notice will be placed in *La Gazette Officielle* notifying taxpayers of the need to submit a return. If a return was previously submitted online an email notification will also be sent.

Individuals must deliver an income return to the Director of Income Tax (Director) within the period specified by the Director, normally by 30 November. Priority is given to returns submitted online.

Tax instalments are paid from the salaries of resident employed taxpayers and directors under the Employees Tax Instalment (ETI Scheme) by employers.

There are two payment dates for all tax not subject to the ETI Scheme. Tax for any year of charge is payable in two equal instalments:

- The first instalment on or before 30 June in that year.
- The second instalment on or before 31 December in that year.

The Director can, at his discretion, allow a further time for payment.

### 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?**

##### **Domicile**

Domicile is relevant in relation to succession and generally follows the principles of English law.

Liability to income tax is determined by residence, not domicile (see below, *Residence*). Income tax is charged at a single rate of 20%.

An individual is solely resident in Guernsey for tax purposes if he is not tax resident elsewhere and spends either:

- 91 days in the year of charge in Guernsey (each day of residence is determined by where he is at midnight).
- 35 days in the year of charge in Guernsey and, during the four preceding years of charge, has spent 365 days or more in Guernsey.

As there is no inheritance or gift tax in Guernsey, domicile does not impact on a taxpayer, other than in relation to rights of succession (see *Question 24*).

##### **Residence**

An individual is principally resident in Guernsey for tax purposes if he does one of the following:

- Spends 182 days in Guernsey in the year of charge.
- Spends 91 days or more in Guernsey in that year of charge and, during the four preceding years of charge, has spent 730 days or more in Guernsey.
- Takes up permanent residence in Guernsey in that year of charge.

Income tax is payable by an individual solely or principally resident in Guernsey on his total income, wherever such income arises or accrues.

Certain loan interest reliefs are available to be offset against income tax, including loan interest relief on moneys, to the limit of GB£400,000, borrowed against the principal private residence in Guernsey.

Income tax is payable by an individual resident but not solely or principally resident in Guernsey on total income, wherever such income arises or accrues, unless:

- He elects to pay the standard charge of GB£27,500. If so, he is only liable to income tax on his Guernsey source income (other than bank interest arising in Guernsey) and any income remitted to Guernsey. In that case, he is not entitled to any allowances, although the standard charge may be set off against the tax that would otherwise be chargeable on his income arising or accruing in Guernsey in that year of charge.
- The individual is resident for employment purposes, and his only income arising in Guernsey (other than bank interest arising) is employment income taxed at source under Guernsey's ETI Scheme. Such individuals are taxed on their Guernsey earnings and remittances to Guernsey. They must file a tax return for the year of charge which covers income arising in Guernsey and non-Guernsey income remitted to Guernsey during that year. Funds remitted to Guernsey are presumed to be income unless the Director is satisfied otherwise. This provision was introduced to benefit migrant workers and those posted to Guernsey on temporary secondment.

Income tax is payable by an individual who is not resident in Guernsey on, broadly, income from real property and profits from a business with a permanent establishment in Guernsey. Income tax is not payable on interest arising in Guernsey on money deposited with a Guernsey licensed institution, although withholding tax may apply under Directive 2003/48/EC on taxation of savings income in the form of interest payments (Savings Directive) (see *Question 6*).

Credit for income tax incurred overseas by an individual may be granted against tax due in Guernsey on the same income under bilateral double tax agreements. Where no bilateral agreement exists, unilateral relief is usually available.

For Guernsey residents, non-Guernsey source income qualifies for an annual cap on tax payable of GB£110,000. This equates to liability on taxable income from such qualifying sources of GB£550,000. Those with taxable income from qualifying sources of more than GB£550,000 in a year of charge benefit.

The GB£110,000 tax cap applies only to non-Guernsey source income. Where the resident has both non-Guernsey and Guernsey source income, he can elect within two years after the end of the relevant year of charge that his total tax liability for that year of charge, on both qualifying and non-qualifying income, be capped at GB£220,000. This is equivalent to tax at 20% on income of GB£1.1 million. Therefore, Guernsey residents with worldwide income of over GB£1.1 million in a year of charge can benefit from the election.

The cap is time apportioned where the individual is resident in Guernsey for only part of the year.

Social security contributions are payable by Guernsey residents at different rates. Employers must also make social security contributions (6.5%) in respect of their employees. There are upper and lower earnings limits which govern the maximum contributions payable. Social security contributions for employed persons are made at source. It is the employer's responsibility to pay both employer and employee contributions to the Social Security Department.

### Taxation on exit

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

Guernsey does not impose any exit tax when a person leaves.

### Temporary residents

#### 4. Does your jurisdiction have any particular tax rules affecting temporary residents?

For income tax issues, see *Question 2*.

In relation to occupation of property, due to the size of Guernsey there are strict controls on who can occupy dwellings. There are two main types of housing:

- **Open market.** Open market dwellings make up about 1,700 of the 22,000 dwellings in Guernsey, and are freely available for occupation by anyone with the right of abode in any EU member state.

- **Local market.** Local market dwellings can only be occupied by locally qualified residents or housing licence holders. There are no controls on who can buy local market properties.

The housing control legislation allows the Housing Department of the States of Guernsey (States) (the Parliament of the Island of Guernsey) to grant housing licences to persons brought to Guernsey to fill positions considered essential to the well-being of the community. These licences enable these persons to occupy certain local market dwellings, which are generally less expensive than open market dwellings.

Following public consultation, a new Population Management System has been agreed by the States. The Population Management (Guernsey) Law, 2016 comes into force in April 2017.

Non-EU nationals must apply to the immigration department for permission to reside or work in Guernsey. Generally, a work permit is only granted if no suitably qualified local exists. Preference is given to EU nationals. Long-term residency in Guernsey is carefully controlled. With certain exceptions, consent for residency is only given to a person owning a residence. The purchase of a residence is in turn subject to consent. This is only given in limited cases, usually involving an open market dwelling and an individual who is clearly going to contribute significantly to Guernsey by paying local taxes.

### 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?

Dwellings profits tax, a tax on capital profit made on an investment in a dwelling in Guernsey or Herm, by sale or lease at a premium, was suspended indefinitely on 25 March 2009.

There is no capital gains tax in Guernsey.

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

Non-residents of Guernsey are not subject to tax on Guernsey-source income except in certain circumstances (see *Question 2*). Generally there is no withholding tax, although there are systems to deduct tax in instalments for tax payable on rental income from Guernsey land and property.

Guernsey is not within the fiscal territory of the EU but had adopted measures to reflect the EU. This has now been repealed.

### Inheritance tax and lifetime gifts

#### 7. What is the basis of the inheritance tax or gift tax regime (or alternative regime if relevant)?

There is no inheritance or gift tax in Guernsey.

#### 8. What are the inheritance tax or gift tax rates (or alternative rates if relevant)?

There is no inheritance or gift tax in Guernsey.

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

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There is no inheritance or gift tax in Guernsey.

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

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There is no inheritance or gift tax in Guernsey.

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**Taxes on buying real estate and other assets**

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

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**Purchase and gift taxes**

Not applicable.

**Annual rates**

Tax on real property is payable annually, based on the size of the property.

**Wealth taxes**

Not applicable.

**Other**

Document duty is charged on:

- The acquisition of land including dwellings. Where the value of the transaction:
  - is GB£250,000 or less, the rate is 2%;
  - exceeds GB£250,000 but does not exceed GB£400,000, the rate is 2.5%;
  - exceeds GB£400,000, the rate is 3%.
- Realty other than dwellings is charged at 3% regardless of value.
- Bonds at the rate of 0.5% of the secured figure.

It is proposed that the rates for the acquisition of dwellings will change from 1 January 2017, the practical effect of which is a saving for properties up to GB£800,000 and an increase thereafter.

An *ad valorem* fee is payable for a grant of representation, at the rate of (broadly) 0.35% of the gross value of the Guernsey assets (see *Question 21*).

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

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Non-resident individuals are liable for income tax on income from real property situated in Guernsey, whether held by the individual or by a company. However, distributions made to a non-resident individual from a Guernsey company or trust are not subject to income tax in Guernsey, unless the company or trust has Guernsey-source income (other than income from bank deposits).

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**Taxes on overseas real estate and other assets**

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**13. How are residents in your jurisdiction with real estate or other assets overseas taxed?**

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For income tax issues, see *Question 2*. There is no capital gains, inheritance, gift or wealth tax in Guernsey.

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**International tax treaties**

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

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Guernsey operates a double tax treaty with the UK and with Jersey. Income arising in the UK and Jersey is granted double tax relief in Guernsey. This is for most income but specifically excludes UK dividends and debenture interest. If the only UK taxable income of a Guernsey resident is from dividends, and the taxpayer or his accountant advises when submitting his Guernsey income tax return that no claim for repayment of UK tax is to be made, the net dividend is assessed to Guernsey tax, by concession only.

Guernsey has signed other double tax and mutual agreements, providing relief from double taxation on certain types of earned income for individuals. Guernsey continues to extend the circumstances in which relief from double taxation can be claimed. Details are available on the Guernsey Income Tax Office website ([www.gov.gg/tax](http://www.gov.gg/tax)).

In 2013, Guernsey signed a memorandum of understanding with HM Revenue & Customs (HMRC) by which HMRC agreed to make available a disclosure facility. That disclosure facility terminated on 31 December 2015. Subsequently Guernsey entered into an inter-governmental agreement with each of the UK and the US in relation to tax information exchange.

In October 2014, Guernsey signed a Multilateral Competent Authority Agreement (MCAA) comprising the Common Reporting Standard (CRS) with 50 other jurisdictions, including the other Crown Dependencies and the British Overseas Territories which has effect from 1 January 2016, with first reporting taking place in 2017. By mutual agreement reporting to the UK moved from the existing inter-governmental agreement to the CRS as from 1 January 2016. Other jurisdictions have agreed to participate from 1 January 2017, with first reporting taking place in 2018.

Guernsey has signed Competent Authority Agreements (CAA) with the British Virgin Islands, the Isle of Man and Jersey relating to the automatic exchange of financial account information similar to, and on the same basis as, the MCAA. The CAA provide for the first exchange of information to take place in 2017 in respect of information relating to 2016.

## WILLS AND ESTATE ADMINISTRATION

### Governing law and formalities

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

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

#### 16. 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?

To be properly executed, a will executed in Guernsey must be both (section 26, *Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2006*) (Law Reform Law):

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

A single will can dispose of both immovables and personalty (movables) or separate wills can be executed.

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

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

### Redirecting entitlements

#### 17. What rules apply if beneficiaries redirect their entitlements?

As there is no inheritance tax or gift tax, there are no tax consequences of a post-death variation.

### Validity of foreign wills and foreign grants of probate

#### 18. 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?

##### Validity of foreign wills

A foreign will is considered properly executed if its execution conforms to the internal law in force in any one of the following:

- The territory where it was executed.
- The territory where the testator died or was domiciled.
- The state of which the testator was a national.
- The territory where the property is situated, in so far as the will disposes of immovables.

##### Validity of foreign grants of probate

A foreign grant of probate is not generally recognised. Where a grant of representation has been obtained in the UK or France, although it must be re-admitted to probate in Guernsey, no evidence as to foreign law is required. Where a grant of representation has been obtained in another jurisdiction, the Registrar of the Ecclesiastical Court (Registrar) may require evidence by affidavit to support the application, in relation to the law of the other jurisdiction.

### Death of foreign nationals

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

Any will and/or grant of representation which is not in English or French must be translated by a translator acceptable to the Registrar, and may require an apostille. The Registrar may require evidence by affidavit of the law of succession of a Guernsey non-domiciliary, in relation to movables situated in Guernsey.

### Administering the estate

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

##### Responsibility for administering

Ownership of immovables situated in Guernsey passes automatically to the heirs.

In relation to movables, the administration is effected by:

- The executor, where there is a will.
- The administrator, where there is no will or no executor to take the grant.

##### Vesting

In relation to immovables, the property vests in the heirs but subject to the rights of the executor where appointed.

In relation to movables, the estate vests in:

- The executor, where there is a will.
- The administrator upon the issuing of the grant of letters of administration.

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**21. What is the procedure on death in your jurisdiction for tax and other purposes in relation to:**

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- **Establishing title and gathering in assets (including any particular considerations for non-resident executors)?**
  - **Paying taxes?**
  - **Distributing?**
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**Establishing title and gathering in assets**

There is no inheritance tax in Guernsey.

The executor must establish title to Guernsey situated movables by obtaining a Guernsey grant of representation to gather the assets into the estate. If the deceased died intestate, the person entitled under the law of the deceased's last domicile must obtain a grant of letters of administration for this purpose, with Guernsey law determining precedence as to entitlement to administer.

**Procedure for paying taxes**

The death certificate, will and/or grant, details of the Guernsey assets, and a valuation and details of the personal representative (PR) must be supplied to the Registrar. The Registrar may require translations and affidavits of evidence about succession rights. The Registrar draws up the oath leading to the grant and requests payment of the fee.

There are no estate taxes.

**Distributing the estate**

An attorney administrator is usually appointed to administer the Guernsey estate if the PR is overseas.

Office copies of the grant are supplied on request, which provide evidence of the PR's right to deal with the estate.

If the PR places an advertisement in a Guernsey newspaper in two successive weeks, requesting claims against the estate and giving details of the intended distribution of the estate, he can distribute the movable estate after three months free of any claims against him as PR, other than those of which he has notice.

If there is no will, the PRs must post a bond as security for twice the value of the estate. This is not required where the PRs appoint an Advocate of the Royal Court as their attorney.

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

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As far as the author is aware, there are no time limits/restrictions/valuation issues that are particularly relevant to an estate with a foreign element.

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

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A will can be challenged on a number of grounds as follows:

- The deceased lacked capacity to make a will.
- There is evidence that the deceased did not intend to make a will.
- The will did not meet the necessary formalities.
- There is evidence of fraud or forgery.
- There is evidence that the will was revoked.
- There is a later will.
- The deceased did not know and approve the contents of his will.
- The deceased did not make the will of his own free will.

The Ecclesiastical Court holds powers to issue grants of representation. It was held in *X v The Registrar of the Ecclesiastical Court of the Bailiwick of Guernsey (2004)* (where there was evidence of fraud) that the Royal Court has an inherent jurisdiction to right any injustice, and the Registrar has a duty to assist in the righting of any wrong. The Royal Court has the power to order disclosure of documents under the Ecclesiastical Court (Jurisdiction) (Bailiwick of Guernsey) Law, 1994.

Forced heirship with respect to both immovable and movable property was abolished by the Inheritance (Guernsey) Law, 2011 (Inheritance Law). The principle of testamentary freedom applies with respect to wills executed after 1 April 2012 (see *Question 24, Current regime*). If a will fails to make reasonable financial provision for a dependant of a Guernsey domiciliary then that dependant has the right to make a claim within six months of the testator's death against the estate of the testator for such provision (*sections 4 and 7, Inheritance Law*).

**SUCCESSION REGIMES**

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

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Guernsey's rules of forced heirship have been abolished with respect to wills written and intestacies occurring after 1 April 2012. Freedom of testamentary disposition now applies.

**Previous regime**

The following applies to testate succession occurring after 1 April 2012 where the will was executed before 2 April 2012, and to codicils to such wills executed at any time, unless the testator declares after 29 June 2011 in the will or codicil that the Inheritance Law must apply (*section 1(6), Inheritance Law*).

The succession rules relating to immovables and movables are different. Guernsey succession rules only apply to movables where a person dies domiciled in Guernsey; otherwise the law of the person's last domicile applies. Guernsey rules for immovables apply to immovables situated in Guernsey, irrespective of where the owner resides or is domiciled.

**Immovables.** Where a person owns immovables situated in Guernsey in his sole name, and dies leaving a spouse, at least one-half of the immovables pass to the surviving spouse, for enjoyment for life or until an earlier remarriage of the surviving spouse, whether or not he leaves a will.

If the owner of Guernsey immovables is survived by descendants, he could only leave them by will to one or more of the following persons:

- The surviving spouse.
- Children.
- Step-children and adopted children and their respective issue.

If between execution of a will and death a child predeceases the testator, the grandchildren can take in place of the deceased parent, if provided for in the will.

**Movables.** If a Guernsey domiciliary dies leaving:

- A spouse and children or other descendants, the spouse is entitled to at least one-third of his movables, and the children or other descendants are entitled to at least one-third between them (*légitime*). The remainder is freely disposable.
- A spouse but no children or other descendants (or children or other descendants but no spouse), the spouse/children or other descendants are entitled to half of the movables. The other half is freely disposable.

In relation to a Guernsey trust of movables or a disposition of movables to or on such a trust, foreign rules of forced heirship are not enforced with respect to non-Guernsey domiciliaries.

### Current regime

The below applies in the following circumstances (*section 1(6), Inheritance Law*):

- To intestacies occurring and wills executed after 1 April 2012.
- To a will executed before 2 April 2012 where, in a codicil to that will, executed after 29 June 2011, the testator declares that the Inheritance Law must apply and the testator's death occurs after 1 April 2012.
- To a will executed after 29 June 2011 but before 2 April 2012, which is stated to take effect under the Inheritance Law and where the testator's death occurs after 1 April 2012.

**Immovables.** On an intestacy, if there are no descendants but the deceased was married at the time of death or was party to a registered civil partnership under the UK Civil Partnership Act 2004 (Civil Partnership Act) or would have been treated under that Act as a civil partner, the surviving spouse or civil partner receives the entirety of the immovables.

If the deceased died leaving descendants, a surviving spouse or civil partner is entitled to an undivided one-half share in the real property of the deceased absolutely and the *usufruct* (enjoyment) in the remaining undivided half-share of the matrimonial home until the formation of another marriage or civil partnership or death, whichever first occurs. Subject to the right of inheritance and enjoyment, the real estate passes to the descendants in equal shares, with rights of representation through all degrees.

Where there is no spouse or civil partner and no descendants, potential heirs are divided into classes which are called on successively to inherit (that is, the second class is not called on to inherit if any of the first class remains, and so on). The classes, in order of priority, are:

- Privileged collaterals (brothers and sisters of the whole or half-blood with representation through all degrees).
- Ascendants.
- Other collateral relatives up to, but excluding, the seventh degree.
- The Crown.

**Movables.** If a Guernsey domiciliary dies leaving:

- A spouse or civil partner and children or other descendants, the spouse or civil partner is entitled to one-half of his movables, and the children or other descendants are entitled to the remaining one-half.
- A spouse or civil partner but no children or other descendants (or children or other descendants but no spouse or civil partner), the spouse or civil partner/children or other descendants are entitled to all the movables.

If a Guernsey domiciliary has no spouse or civil partner, children or other descendants, his movables pass to his nearest relatives in the following order of priority:

- Privileged collaterals.
- Ascendants.
- Other collateral relatives up to, but excluding, the seventh degree.
- The Crown.

The principle of *commorientes* (simultaneous deaths) applies so that where two or more individuals die together and it cannot be determined who died first, it is presumed that they died in order of seniority so that the youngest is deemed to have died last unless, in the case of a will, there is contrary intention or the presumption can be rebutted by order of the court (*section 26, Inheritance Law*). In intestate succession, where a spouse or civil partner fails to survive the deceased by a period of at least 28 days, the surviving spouse or civil partner is deemed to have predeceased the deceased (*paragraph 7, Schedule, Inheritance Law*).

### Forced heirship regimes

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

#### Avoiding the regime

The regime of forced heirship only applies with regard to wills executed before 2 April 2012 and to codicils to such wills unless the testator declares in the will or codicil that the Inheritance Law must apply (see *Question 24, Previous regime*).

#### Assets received by beneficiaries in other jurisdictions

Assets that are jointly held pass to the survivor (unless the right of survivorship is disappplied), without forming part of the estate.



Under the regime relating to *légitime*, a forced heir cannot be compelled to enforce their rights in the estate (see *Question 24, Previous regime*).

A spouse can agree to waive their rights of life enjoyment by registering a contract to that effect in court.

#### Mandatory or variable

Not applicable (see *Question 24*).

#### Real estate or other assets owned by foreign nationals

### 26. 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?

Immovables situated in Guernsey are subject to Guernsey succession law, regardless of the domicile of the individual. Movables owned by a non-domiciled individual are subject to the succession law of the last domicile of the deceased (see *Question 24, Previous regime*).

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

The Royal Court recognises the doctrine of *renvoi* in these circumstances.

## INTESTACY

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

See *Question 24*.

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

Certain persons who believe that the disposition of the deceased's estate, either by will or on intestacy, does not make reasonable financial provision for them may claim against the estate.

The persons who may make such an application are:

- A spouse or civil partner.
- A former spouse or civil partner who has not entered into a subsequent marriage or civil partnership.
- Any other person who for the two years before the death was living in the same household as the deceased as their spouse or civil partner.
- A child.
- Any person who was treated as a child.
- Any person who immediately before the death was being maintained, wholly or partly, by the deceased.

The deceased must be domiciled in Guernsey. A claim cannot be made without the leave of the court after six months from the death of the deceased. Certain property may be brought back into the estate for the purpose of calculating the value of the estate at death including nominated property, gifts made in contemplation of death, joint property passing by survivorship and dispositions made to defeat a claim (*section 11, Inheritance Law*).

## TRUSTS

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

#### Type of trust and taxation

Subject to the Trusts (Guernsey) Law, 2007 (Trusts Law), a trust is valid and enforceable in Guernsey. A trust exists if a person (trustee) holds or has vested in him, or is deemed to hold or have vested in him, property which does not form or which has ceased to form part of his own estate, for:

- The benefit of another person, whether or not yet ascertained or in existence.
- Any purpose, other than a purpose for the benefit only of the trustee.

The UK ratification of the Hague Convention on the Law Applicable to Trusts and on their Recognition 1985 is extended to Guernsey and is incorporated into Guernsey law.

Trusts do not have separate legal personality. The terms of the trust are usually evidenced in writing.

Trusts are not subject to any capital taxes in Guernsey. The trustee of a trust that is locally resident is only subject to income tax to the extent the beneficiaries are locally resident.

#### Residence of trusts

A trust is resident in Guernsey if the trustee is resident in Guernsey. Residence of an individual is determined by reference to the Income Tax (Guernsey) Law, 1975 (as amended) (Income Tax Law) (see *Question 2*). However, residence of a corporation (company) is determined by reference to the Trusts Law. For the purposes of the Trusts Law, a corporation is resident in the place in which it has its registered office. Therefore, a trust with a trustee that is a corporation with its registered office in Guernsey is resident in Guernsey.

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

Guernsey recognises trusts, whether or not governed by another jurisdiction's law, and whether created for its own residents or for foreign persons. In addition, a foreign trust is governed by, and interpreted in accordance with, its proper law (*section 65(1), Trusts Law, subject to section 65(2), Trusts Law*). A foreign trust is unenforceable in Guernsey to the extent that (*section 65(2), Trusts Law*):

- It purports to do anything contrary to Guernsey law.
- It confers or imposes any right or function, the exercise or discharge of which would be contrary to Guernsey law.
- The Royal Court declares that it is immoral or contrary to public policy.

## ONLINE RESOURCES

## Guernsey Legal Resources

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**Description.** This website is a joint initiative of the Royal Court of Guernsey and the Law Officers of the Crown and reflects their commitment to improving the administration of justice. It contains a comprehensive collection and database of Guernsey's legal material.

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

As there is no capital gains tax, there are no tax consequences in Guernsey of importing/exporting a trust to/from Guernsey, unless there are locally resident beneficiaries. There may be tax consequences elsewhere, depending on the residence of the settlor and/or the beneficiaries.

### 33. 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

A trust for or including non-charitable purposes, created by a written instrument, is valid and enforceable in relation to its non-charitable purposes if it provides for the appointment of both (*section 12(1), Trusts Law*):

- An enforcer in relation to the trust's non-charitable purposes.
- A new enforcer, at any time when there is no enforcer.

#### Perpetuities and accumulations

There is no rule against perpetuities under Guernsey law.

Income can be accumulated throughout the lifetime of a trust. A trust for charitable purposes may not be considered charitable if the income is never distributed.

#### Beneficiaries' rights to information

The trust instrument can restrict the rights to information for beneficiaries and trust officials, for example a protector (*section 26(1), Trusts Law*). Where the terms of the trust prohibit or restrict the provision of information in accordance with section 26(1), a trustee, beneficiary, trust official or settlor can apply to the Royal Court for an order authorising or requiring provision of the information. The burden of proving that the information should be supplied rests on the person seeking disclosure. However, the settlor of a non-charitable purpose trust cannot limit the rights to information to be given to the enforcer.

### 34. 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?

A Guernsey trust is not void (*see below*) because:

- The laws of another jurisdiction prohibit or do not recognise the concept of a trust.
- The trust or disposition:
  - avoids or defeats (or potentially avoids or defeats) rights, claims, interests, obligations or liabilities conferred or imposed by the law of another jurisdiction on any person, due to a personal relationship to a settlor or any beneficiary (including community of property); or
  - contravenes (or potentially contravenes) a rule of law, judgment, order or action of another jurisdiction intended to recognise, protect, enforce or give effect to such rights, claims, interests, obligations or liabilities.

In particular:

- The Guernsey trust, and any disposition of property to or on such a trust, is not void, voidable, liable to be set aside, invalid or subject to any implied condition.
- The capacity of any settlor, trustee, enforcer, trust official or beneficiary is not questioned.
- A settlor, trustee, enforcer, trust official, beneficiary or third party is not subjected to any obligation or liability or deprived of any right, claim or interest.

No judgment or order of a court of a jurisdiction outside Guernsey is recognised or enforced, or gives rise to any right, obligation or liability or raises any estoppels, if and to the extent it is inconsistent with the Trusts Law.

### 35. 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?

Guernsey has not adopted specific asset protection trust legislation. The effectiveness of a trust in Guernsey to protect assets depends primarily on its validity. Any valid trust other than a bare trust divests the settlor of the settled assets, so that they do not form part of his personal estate for paying creditors, irrespective of whether the settlor is solvent or insolvent.

The question arises as to when an otherwise valid trust can be challenged. The most apparent risk to a trust is that a creditor, with a valid claim against the settlor, could claim prejudice and seek to set aside the trust, to the extent that its purpose may be to prefer the beneficiaries of the trust above the settlor's creditors. Two main issues arise in this context:

- Whether the intent to defeat creditors must be the sole or a dominant purpose for settlement of the trust, or whether being merely one of a number of purposes will suffice.
- Whether creditors here means current and future creditors.

A trust established under Guernsey law, with the substantial purpose of defeating creditors, may be subject to a successful claim for restitution, but the term creditors for these purposes does not include unknown future creditors.

The customary law position has been confirmed by two Jersey cases (which, although not binding in Guernsey, are persuasive) (*Golder v Societe des Magasins Concorde Limited* [1973] JJ 721 and *Re Esteem Settlement* (2002) JLR 53), and one Guernsey case (*Flightlease Holdings (Guernsey) Limited et al v International Lease Finance Corporation* [2005] Judgment 55).

It may also be possible to persuade the Guernsey court to apply foreign insolvency law to set aside dispositions of property to trusts. For example, under section 426 of the UK Insolvency Act 1986 (see, for example, *Al Sabah and another v Grupo Torras SA* [2005] 2 AC 333), there is a legislative framework for inter-jurisdictional assistance, on request by the English court, and the reciprocal enforcement of UK insolvency orders of all kinds in foreign territories. Section 426 was extended to Guernsey by the UK Insolvency Act 1986 (Guernsey) Order (SI 1989/2409), and adopted in Guernsey under the Insolvency Act 1986 (Guernsey) Order 1989.

In relation to beneficiaries, see *Question 34*.

## CHARITIES

### 36. Are charities recognised in your jurisdiction?

Charities are recognised in, and may be governed by, the law of Guernsey. A charity is any organisation that is established for purposes which are exclusively charitable (the advancement of religion or education, the relief of poverty, and other purposes regarded as being for the benefit of the community) and which provide public benefit. The UK Charities Act 2011 contains 13 descriptions of charitable purposes that help to define the term charity.

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

A charity may be set up as a trust, foundation, company or unincorporated association. The structure is not as important as the purpose. The Charities and Non-Profit Organisation (Registration) (Guernsey) Law, 2008 requires a non-profit organisation (NPO) based in Guernsey (other than manumitted organisations) to register as an NPO at the Guernsey Registry. Failure to do so is an offence. Exemptions apply if gross assets are less than GB£10,000, or gross annual income is less than GB£5,000.

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

A charity is entitled to apply to the Director for exemption from income tax by submitting a written application with a copy of the governing document, and details of bank accounts.

Overseas charities that can demonstrate a like tax exemption elsewhere are exempt from Guernsey tax in respect of income derived from investments or deposits there (*section 40r, Income Tax Law*). In practice, the "exemption" is broader, because any trust established or operating in Guernsey for activities or purposes abroad will have, in effect, non-resident "beneficiaries" and so be not liable to Guernsey income tax, which is one of the reasons why Guernsey is regarded as a convenient location to establish NPOs that are not intended for local benefit.

## OWNERSHIP AND FAMILIAL RELATIONSHIPS

### Co-ownership

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

Under the laws of Guernsey, there are two forms of co-ownership of property:

- Joint ownership.
- Ownership in common.

Property owned jointly and for the survivor automatically passes on death to the survivor. It does not pass to the deceased's heirs and is not available to satisfy the deceased's creditors.

Property owned in common does not pass to the survivor and is disposed of under the will or intestacy of the co-owner. It is available to satisfy the deceased's creditors. Jointly owned property may also be brought into account for the purposes of satisfying an award under the Inheritance Law.

Joint ownership can be severed, giving rise to ownership in common.

As there is no inheritance tax in Guernsey, there are no particular tax consequences arising from co-ownership.

### Familial relationships

#### 40. 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?

Spouses do not enjoy rights to community of property *inter vivos*. In relation to a Guernsey trust settled by a Guernsey domiciliary, the rules of forced heirship may apply for trusts established before 2 April 2012 (*section 3, Inheritance Law*).

No property or succession rights are granted to cohabitants but cohabitants are among the persons who can make a claim for financial provision under the Inheritance Law (*section 4(2)(e), Inheritance Law*) (see *Question 29*).

Civil partnerships cannot be entered into under Guernsey law, but are recognised in relation to a beneficial interest in a trust if the trust so provides and to a claim for financial provision and to intestacy under the Inheritance Law (*sections 4(2)(a) and (b) and paragraphs 7, 12, 13, 19 and 21 of the Schedule, Inheritance Law*).

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

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Same-sex couples cannot enter into a formal relationship. Therefore, for tax purposes, in Guernsey they are not treated as related to each other in any degree. Where an individual had entered into a registered civil partnership under the UK Civil Partnership Act or would have been treated under that Act as a civil partner, the civil partnership is treated as a marriage for succession purposes (see *Question 24, Current regime: Immovables*).

In all cases a same sex marriage in any other jurisdiction is not recognised as a marriage under Guernsey law.

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**42. How are the following terms defined in law:**

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- **Married?**
- **Divorced?**
- **Adopted?**
- **Legitimate?**
- **Civil partnership?**

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**Married**

Marriage is the union between a man and a woman. Foreign marriages are invariably recognised in Guernsey. The formalities of the marriage abroad must have been carried out according to the law of the country where it took place. Each party must have the capacity to marry according to the law of their home country before they got married. Departments of States often ask to see the original marriage certificate or a copy certified by a lawyer, together with a certified translation if appropriate.

**Divorced**

A divorced person is one whose marriage has been dissolved. In Guernsey, this is after proceedings where the Court of Matrimonial Causes has ordered a final order of decree of divorce. A petitioner for divorce must satisfy the Court as to the breakdown of the marriage.

Divorces pronounced in the UK are automatically recognised. Divorces pronounced across the EU are recognised save for the most exceptional circumstances. Recognition of divorces outside the EU depends on whether they are granted by proceedings, and the procedure was followed correctly according to the local law, the foreign divorce will probably be recognised. Guernsey does not recognise divorces granted without judicial proceedings, since they do not always require giving advance notice to the wife. Specialist advice should be taken.

**Adopted**

An adopted person is a person recognised as adopted under the Adoption (Guernsey) Law, 1960. An adopted person is treated for all succession purposes as the child of the adoptive parent(s), and is no longer treated as the child of the birth parents.

**Legitimate**

A legitimate person is one whose father and mother were married to each other at the time of his birth. The presumption of legitimacy is rebuttable. The time of birth includes any time in the period beginning with the insemination resulting in his birth or his conception, and ending with his birth.

An illegitimate child can be legitimated by the subsequent marriage of the birth parents to each other.

There is no distinction between a legitimate, legitimated or an illegitimate child in relation to succession to property, except that an illegitimate person is presumed not to have been survived by his father, or by any person related to him only through his father, unless the contrary is shown.

**Civil partnership**

See *Question 40*.

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**Minority**

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**43. 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?**

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A minor (that is, an individual under the age of 18):

- Is not bound by any contract.
- Cannot make a will.
- Cannot give a valid receipt unless the instrument so allows.
- Requires the consent of parents to marry.
- Cannot be a director of a company.
- Cannot own real property.

A person with parental responsibility can deal with assets on behalf of a minor. Mothers, and fathers who are married to the child's mother at the time of birth, acquire parental responsibility at birth. Since 4 January 2010, a father who is not married to the mother at the time of birth acquires parental responsibility:

- If he is named as the father on the birth certificate.
- If he subsequently marries the child's mother.
- By written agreement with the child's mother.
- By order of the court.

Other persons may acquire parental responsibility, including an individual appointed as *tuteur*(guardian) of the minor by will or by order of the Royal Court.

## CAPACITY AND POWER OF ATTORNEY

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### 44. 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?

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A power of attorney executed under Guernsey law lapses on supervening mental incapacity.

Enduring or lasting powers of attorney made by non-resident donors that are effective under the law of the competent foreign jurisdiction may be recognised by the Royal Court.

Where an individual suffers from infirmity of mind or body (the patient), application is made to the Royal Court by the person wishing to be appointed as the *curateur* (guardian) of the patient. Evidence of infirmity can be given orally or by affidavit. Up to five members of the patient's family are joined to form a family council who act as advisers. The guardian must look after the patient's property. No security is required.

## PROPOSALS FOR REFORM

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

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The introduction of lasting powers of attorney and the form such powers should take is being considered. It is also proposed that changes be made to the Trusts Law.

## Contributor Profiles

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# Private client law in Jersey: overview

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## 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 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.

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. Until recently, 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 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 uses, he is regarded as resident for any year in which he visits Jersey, for whatever length of time. Further:

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

However, an individual whose centre of life is abroad, in the sense that he has a home and a business or professional activities abroad which keep him 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 having retired from work, he is not refused the concession to the charge to income tax if he can show that, in the ordinary course of his 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 20% 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.

#### Other

There are no other relevant concepts.

#### Taxation on exit

### 3. Does your jurisdiction impose any tax when a person leaves (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.

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 residents?

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.

#### 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 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.

#### Inheritance tax and lifetime gifts

### 7. 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 inheritance tax or gift tax rates (or alternative rates if relevant)?

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 movable estate, subject to certain *de minimis* provisions and a cap for estates in excess of a fixed amount, presently GB£13,360,000).

**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.

**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.

**Wealth taxes**

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

**Other**

Apart from land transaction tax (a form of duty on share transfer transactions involving immovable property in Jersey) there are no other relevant taxes.

**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 with real estate or other assets overseas taxed?**

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

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

Currently, Jersey has full double taxation agreements with Estonia, Guernsey, Hong Kong, China, Isle of Man, Luxembourg, Malta, Qatar, Rwanda, Singapore and the UK. Copies of those agreements can be found on the Comptroller of Taxes' website (). It is expected that further double taxation agreements will be concluded in the near future with other countries, including Bahrain, Cyprus, Mauritius, Rwanda, Saudi Arabia and the Seychelles.

In addition, Jersey has concluded a number of tax information exchange agreements with several countries, including the UK and the US. Jersey became a party to the OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters on 1 June 2014. The full list of double tax treaties and tax information exchange agreements can be found on Jersey Finance's website ().

In October 2014, Jersey signed a Multilateral Competent Authority Agreement concerning the Common Reporting Standard with 50 other jurisdictions, including the other Crown Dependencies and the British Overseas Territories.

**WILLS AND ESTATE ADMINISTRATION****Governing law and formalities****15. 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.

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#### **16. 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?**

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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 direction.
- It must appear that the testator intended by his 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 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.

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 15*).

#### **Redirecting entitlements**

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##### **17. What rules apply if beneficiaries redirect their entitlements?**

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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 (*Probate Law*):

- 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.

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**

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##### **18. 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?**

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For the rules governing the formal validity of a testamentary document under Jersey law see *Question 15*.

#### **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 uses the "fast-track" procedure (see below), or if he appoints an attorney administrator to attend before the Judicial Greffier and swear the oath on his 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 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

#### 19. 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 presently has three firms of funeral directors who can assist with the formalities, including repatriation of the body.

### Administering the estate

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

##### Responsibility for administering

See *Question 15*.

##### Vesting

As discussed in *Question 15*, 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.

#### 21. 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 taxes?**
- **Distributing**

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.

#### 22. 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.

#### 23. 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 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 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 24) 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

### 24. 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 Jersey immovable property by will almost entirely as he 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 *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

### 25. 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, recent 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 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****26. 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 death.
- The law regarding the succession of any immovable property is generally determined by the applicable law where the immovable property is situated.

**27. 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****28. 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, 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, 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 GB£30,000 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.

**29. 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****30. 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 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*.

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

- 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.

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

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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 30*).

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### 33. 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 order of the Jersey court. The extent to which a trust instrument governed by Jersey law can restrict the beneficiaries' rights to information about the trust has not been finally determined. There are some indications in recent cases that the Jersey courts will not permit a Jersey proper law trust instrument to restrict completely the beneficiaries' rights to information.

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.

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### 34. 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?

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See *Question 35*.

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### 35. 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?

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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 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.

## CHARITIES

### 36. Are charities recognised in your jurisdiction?

Charities are recognised and have operated in Jersey for many years. The current definition of "charity" found in the Income Tax (Jersey) Law 1961 (Income Tax Law) is drawn from the 1601 Statute of Elizabeth. However, there is currently neither a register of charities nor a body specifically established to oversee their recognition and activities, though this is set to change in the near future.

On 18 July 2014, the States of Jersey approved the adoption of the Charities (Jersey) Law 2014, (Charities Law). Parts 1 to 3, Articles 32, 38, 39, 40, 42, 43 and 44 of the Charities Law came into force on 21 November 2014 and it is expected that the remaining parts of the statute will be brought into force at some point in 2017. So far 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.

When the remainder of the Charities Law is brought into force it will:

- Establish a new register of charities and a registration process.
- Provide that only a registered charity will be able to access charitable reliefs and be entitled to call itself a charity.
- Divide 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).
- Provide that all registered charities must furnish the Jersey Charity Commissioner with certain key items of information, but restricts the amount of information which is placed in the public domain in the case of restricted and historic charities.
- Give 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.
- Provide that each governor of a charity must ensure that the charity acts in accordance with the charity's purposes and delivers public benefit.
- Place restrictions on the use of the terms "charity" and "charitable". Only registered charities will be 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.

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

There is currently no central public register of charities and no single body in Jersey which is currently undertaking the registration and oversight of the activities of charities in Jersey, but this is set to change (*see Question 36*).

Under the current regime, the charity, foundation with charitable purposes or non-profit organisation (NPO) wishing to apply for exemption from certain taxes must apply to the Comptroller of Taxes and submit a copy of its constitution to the Taxes Office (*see Question 38*). However, when the remaining parts of the Charities Law come into force, an individual donor will be required to comply with the requirements set out in that statute (*see Question 36*). From that point onwards, only registered charities which comply with the requirements of the new regime will be able to access charitable tax reliefs (*see Question 38*) and will be entitled to call themselves a charity.

Under the new regime, the Jersey Charity Commission will be primarily responsible for the regulation and oversight of charities in Jersey.

HM's Attorney General in Jersey is usually convened in any legal proceedings involving any charity in Jersey, or may initiate proceedings himself if he has a concern about a particular charity's activities.

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

Under the current regime and until the remaining parts of the Charities Law come into force, charities, foundations with charitable purposes and certain NPOs established in Jersey can apply to the Comptroller of Taxes for exemption from:

- Income tax.
- Goods and services tax (GST).
- Stamp duty.
- Land transaction tax.

The charity, foundation with charitable purposes or NPO wishing to apply for exemption must submit a copy of its constitution to the Taxes Office. Annual accounts are not, in most cases, required to be submitted. However, the Taxes Office can request accounts at any time to ensure that income is solely being used for charitable purposes.

The Comptroller of Taxes also operates lump-sum donation and deed of covenant schemes whereby Jersey charities can reclaim the income tax paid with respect to donations/payments made by any Jersey resident in certain circumstances.

Charities from Guernsey and the UK can apply for exemption from income tax and GST. A claim is made by providing a copy of the exemption letter from the relevant Guernsey/UK tax authorities. However, only charities established in Jersey can benefit from the lump-sum donation and deed of covenant schemes.

## ONLINE RESOURCES

### Jersey Legal Information Board

W [www.jerseylaw.je](http://www.jerseylaw.je)

**Description.** Official website of the Jersey Legal Information Board. This is the repository of all laws and judgments for the Island of Jersey.

When all of the Charities Law is in force, it will remove the requirement to apply to the Taxes Offices. Therefore, any 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.

Any entity which wishes to receive all charitable tax reliefs, and have the right to call itself a charity in Jersey, must apply to be put on the charity registry following the coming into force of the entire Charities Law and transitional arrangements will apply for a limited period of time. 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 will be 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.

## OWNERSHIP AND FAMILIAL RELATIONSHIPS

### Co-ownership

#### 39. 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 share passes to his 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 25*).

### Familial relationships

#### 40. 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 now affords civil partners, broadly speaking, the same rights (including all civil, fiscal and succession rights) as a married couple.

#### 41. 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 40*).

#### 42. How are the following terms defined in law:

- **Married?**
- **Divorced?**
- **Adopted?**
- **Legitimate?**
- **Civil partnership?**

#### Married

Under Jersey law, marriage is the consensual union of a man to a woman to the exclusion of all others. 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 (*Article 2, Civil Partnership (Jersey) Law 2012*):

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

### Minority

#### 43. 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 presently 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 GB£25,000. 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

#### 44. 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 a statutory power to appoint a curator to administer the property of a person (a patient) who is incapable of managing and administering his own affairs. The application to the Royal Court is brought by the Attorney General, normally following the submission of a report by the patient's doctor. The Royal Court appoints a suitably qualified professional person (lawyer, accountant, doctor and so on) to act as the curator. The curator must keep proper and accurate accounts of the patient's property and seek the Royal Court's prior consent to any significant transaction concerning the patient's property. The curatorship ends on the death of the patient or by further order of the Royal Court.

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

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

In September 2015 a move to introduce same-sex marriage in Jersey was approved by the States of Jersey. The draft legislation, which will be voted on separately, is due to come back before the island's government by before the end of 2017. The move, if it is ultimately approved in its final form, will see the introduction of two types of marriage (civil and religious), the retention of civil partnerships and minor changes to the Jersey's marriage laws.



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#### Recent transactions

- Advising on the establishment of the first Jersey foundation to be used as a private trust company.
- Migrating and re-organising substantial trusts to Jersey from the Isle of Man.
- Advising a number of trustees about disclosure of trust information to foreign tax authorities.
- Advising local clients on the creation of trusts and will trusts for their children and future generations, including dealing with forced heirship rules under Jersey law and how Jersey real estate can be held through a trust structure.

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ANNE ROACHE, INFORMATION MANAGER,  
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