

JER-01 Constitution and relationship with the European Union

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Introduction

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Constitution and relationship with the European Union

JER-01 The Channel Islands, together with the UK, the Isle of Man and the Irish Republic, constitute a geographical area known as the British Isles. Jersey is autonomous in all matters other than defence and international relations which are the responsibility of the Crown of England and are exercised by the Government of the UK. Jersey maintains full internal self-government including fiscal autonomy. United Kingdom Acts of Parliament may be extended to Jersey by express words or by extension in whole or in part by Order of the Queen in Council. Whilst, in strict law, it is considered that the UK Parliament could legislate for Jersey on any matter, a constitutional convention has been established whereby Parliament will not legislate for Jersey without its consent on matters of purely domestic concern. Taxation is considered as a matter of domestic concern.

The Channel Islands' unique constitutional relationship with the UK has also been accepted by the EU. Under a special protocol to the UK Treaty of Accession to the European Community, the Channel Islands were made subject to certain provisions of the Treaty concerning the free movement of industrial and agricultural goods. However, the Islands are not members or part of the Union and are not therefore subject to EC directives concerning the free movement of persons, capital movements and the harmonisation of taxation and social policies.

However, in 2017 the UK invoked the withdrawal process from the EU, commonly referred to as "Brexit". The UK formally left the EU on 31 January 2020 and entered into a transition period which ended on 31 December 2020, following which the special protocol no longer applies to the Channel Islands. Jersey's Brexit objectives are to continue the existing relationships with the

UK and with the EU and to ensure Jersey has appropriate bilateral agreements and arrangements in place (independent from the UK's relationship with the EU).

In the lead up to Brexit, it is helpful that the English Court of Appeal has accepted that the EU right of free movement of capital applies to movements between the UK and Jersey and that Jersey has "third country" status for the purpose of free movement of capital.

Footnotes

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JER-02 Customary law

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Sources of law

Customary law

JER-02 The foundation of Jersey customary law is the law of Normandy from which Jersey law developed in the centuries following separation from mainland Normandy. Where no clear Jersey precedents apply, reference is still made to Normandy and other French customary law systems, particularly in cases relating to real property, conveyancing and succession. However, in commercial and trust matters the Jersey courts tend to be guided by the common law of England.

Statutory law

JER-03 The sources of statutory law in Jersey are as follows:

- (a) laws passed by the Island's legislature;
- (b) delegated legislation made under (a);
- (c) triennial regulations passed by the States and renewed every three years;
- (d) Acts of the UK Parliament extended by Order in Council with the consent of the Island; and
- (e) Acts of the UK Parliament that expressly apply to Jersey.

In recent times, the tendency has been for the law to become more and more anglicised. Most legislation enacted prior to 1940 was in French. Since then, legislation has been passed in French and English and is now almost wholly in English.

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JER-04 Individuals

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Individuals

JER-04 On 1 November 1999 the age of majority was reduced from 20–18 so that now any individual over 18 has full legal capacity to enter into legal transactions save in so far as that capacity may be limited by mental incapacity.

In the case of an individual under 18 who owns (or inherits) movable property over £25,000 or immovable property of any value, a *tuteur* (guardian) must be appointed by the Royal Court of the Island of Jersey (the Royal Court). Since the adoption of the Children’s Property and Tuteurs (Jersey) Law 2016, which abolished the previous requirement that a *tutelle* (guardianship committee) consist of the *tuteur* together with six *electeurs*, the *tuteur* is now solely responsible for administering and protecting the minor’s assets until he attains the age of 18. The role of the *electeurs* has been abolished, although transitional provisions apply to a *tutelle* established prior to 2016.

A *tuteur* can only be an individual, however, if the Royal Court considers it appropriate, it may appoint more than one person to act as *tuteur*. The *tuteur* is under a duty to prepare and submit annual accounts to the Judicial Greffier of the Royal Court. The *tuteur* is entitled to remuneration (at a rate specified in the rules of court) and reimbursement for reasonably incurred expenses. The *tuteur* continues in this role until the minor attains the age of 18, the minor dies, or the *tuteur* is removed from office by the Royal Court. When the minor reaches the age of 18 or dies, the *tuteur* must take all necessary steps to transfer the administration of the minor’s property to the minor or to the executor of the minor’s estate.

JER-05 Partnerships

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Partnerships

JER-05 A partnership is not a separate legal entity. In this respect it is similar to English law. Save as indicated below, there is no statutory partnership law nor is there any substantive body of case law. In so far as the Partnership Act 1890 of the UK is generally regarded as being a consolidation of the existing common law, it is generally felt that the Jersey courts would apply principles very similar to those laid down by English law. Partnerships are usually constituted by written agreement between the parties setting out the objects of the partnership and the rights and duties of the parties between themselves although it is possible to have an oral partnership.

In addition, Jersey recognises the concept of limited partnerships which were introduced and are governed by the Limited Partnerships (Jersey) Law 1994 (the LP Law) and updated by the Limited Partnerships (Amendment No. 2) (Jersey) Law (the LP Amendment Law), and limited liability partnerships which were introduced as a concept by the Limited Liability Partnerships (Jersey) Law 1997 since replaced by the Jersey Limited Partnerships (Jersey) Law 2017.

In 2011, two new types of limited partnership were introduced in Jersey pursuant to the Separate Limited Partnerships (Jersey) Law 2011 and the Incorporated Limited Partnership (Jersey) Law 2011. These are the separate limited partnership and the incorporated limited partnership. The new forms differ from a conventional limited partnership in that each has a separate legal personality. The incorporated limited partnership is further distinguished by being constituted as an independent body corporate having perpetual succession.

In 2022, the LP Amendment Law introduced reforms designed to modernise and clarify aspects of the LP Law by introducing further flexibility and setting out a new statutory process for terminating a limited partnership in Jersey. Some of the key changes included:

- expanding the list of statutory “safe harbours”
- a number of matters in the LP Law are made subject to the terms of the limited partnership agreement and restrictions which would otherwise limit the powers of a general partner have been removed
- changes to limited partners' clawback obligations and the liability of limited partners for the debts and obligations of a limited partnership.

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Trusts

General

JER-06 Before 1984 there was no statute dealing with trusts in Jersey despite the fact that many thousands of trusts had been established on the Island by people from all parts of the world. However, the Royal Court had recognised the concept of trusts and applied the principles of equity developed by the Chancery Division of the High Court in England. Nevertheless, there was some doubt as to whether all of those principles were applicable. Thus it was not clear whether there was a rule against perpetuities and if so, what the perpetuity period was and it was generally felt that there was no restriction on accumulation of income.

In 1984, the States passed the Trusts (Jersey) Law 1984 (“the 1984 Law”). It gave statutory recognition to trusts and provided a general framework for the constitution of trusts. However it was not a codification of the law of trusts and much is left to the courts to develop. The courts have applied general English equitable principles insofar as these do not derive directly from UK statutes.

In essence, a trust exists where the legal ownership of property is vested in one person (the trustee) for the benefit of other persons (the beneficiaries). Trusts may be fixed or discretionary. In a fixed trust, the trust deed specifies the exact interests of the beneficiaries. Thus, a trust may provide that assets will be left upon trust for A for life and, following his death, will be divided equally between A’s children. A discretionary trust provides that the assets in the trust may be distributed by the trustee at his discretion amongst any one or more of the beneficiaries. Thus, no beneficiary has any right to any of the assets which will only become his if the trustee so

decides. The discretionary trust is very common in Jersey because of the flexibility which it gives to meet varying circumstances and because it means that in law, no beneficiary has a right to any of the assets. This may often be of assistance in connection with estate planning.

Differences from English law

JER-07 It is not possible in a work of this nature to comment fully on the law of trusts as applied in Jersey. However, it may be of assistance to list some of the differences from English law (references below are references to the articles of the 1984 Law):

- (a) The proper law of a trust is conclusively determined by any express choice of proper law made in the trust deed (art.4).
- (b) There is no rule against perpetuities. Jersey trusts can last for unlimited duration (art.15).
- (c) Any purported trust by which the trustees directly hold Jersey immovable property is invalid (art.11(2)).
- (d) Subject only to any limitations in the trust deed, a trustee has, in relation to the trust property, all the same powers as a natural person acting as the beneficial owner of such property (art.24(1)). Thus there are no restrictions on the type of investments which the trustee has legal capacity to acquire but this widely cast power is cut back in practice by art.21 which imposes on trustees a duty to exercise powers prudently and, so far as is reasonable, to preserve and enhance the value of the trust fund.
- (e) If the trust deed so provides, a trustee may delegate his functions. There is also a statutory power to delegate certain functions of the trustee, such as investment management, which is applicable unless specifically excluded in the deed (art.25).
- (f) The indemnity provisions in a trust may not release a trustee from liability for a breach of trust which arises from his fraud, wilful misconduct or gross negligence (art.30(10)) as introduced by art.5 of the Trusts (Amendment) Jersey) Law 1989) (the 1989 Amendment).
- (g) The trust deed may provide for income to be accumulated for the whole of the existence of the trust (art.38(1)) as amended by the Trusts (Amendment No.7) (Jersey) Law 2018 (“Amendment No.7”).
- (h) The statutory power of advancement applies to the whole of a beneficiary’s interest (subject to the terms of the trust) (art.38(7)).
- (i) Non-charitable purpose trusts are permitted (art.12) provided an enforcer is appointed whose duty it is to enforce the trust, thus making the trustee accountable.
- (j) A person may in the capacity of a trustee of one trust enter into a contract or other arrangement with himself in the person’s capacity as a trustee of one or more other trusts (art.31(3)).

Forced heirship

JER-08 Article 9 of the 1984 Law introduced by the 1989 Amendment and as further amended by the Trusts (Amendment No.4) (Jersey) Law 2006 and the Trusts (Amendment No.5) (Jersey) Law 2012 (the “2012 Amendment”) provides that, where a person domiciled outside Jersey makes an inter vivos transfer of property to a trust governed by Jersey law, no rule relating to inheritance or succession (including forced heirship and *légitime* rights) will affect such transfer or the validity of such trust. The article also deems the transferor to have had capacity under Jersey law to make the transfer provided that he was of full age and sound mind under the law of his domicile at the time of the transfer. Thus, if a person domiciled in Switzerland and of full age and sound mind under Swiss law makes an inter vivos settlement governed by Jersey law and transfers property to it, then, so far as Jersey law and the Jersey courts are concerned, any rule of Swiss law as to reserved portions for widows or children should not affect the trust or the trust property. Article 9(2)A, however (as introduced by the 2012 Amendment), makes clear that there are limits to the protection art.9 can give, for example it cannot validate a transfer of property that was neither owned by the settlor nor the subject of a power of disposition vested in the settlor or validate any testamentary disposition that is invalid under the law of the testator’s domicile at the time of his death.

Donner et retenir ne vaut

JER-09 There is a maxim of Jersey law known as *donner et retenir ne vaut*. This is derived from old Norman law and means that a gift is invalid where the donor retains the power to dispose freely of the thing given by him or where he remains in possession of the same. This maxim caused considerable problems in connection with trusts created before 1984 which were revocable or where the settlor retained wide powers of appointment over the trust fund pursuant to the terms of the trust deed. It has been held that such powers may breach the maxim and render any gift to the settlement invalid (*Rahman v Chase Bank & Trust Co (CI) Ltd (1990 unreported)*). However, the problem is now historical. The 1984 Law provided that trusts may be revocable (art.40) and that powers of appointment may be vested in any person (art.39). In order to deal with any perceived residual difficulties, the 1989 Amendment provided at art.1 that “nothing in the terms of a trust shall cause a transfer or disposition of property to a trust to be invalidated by application of the rule *donner et retenir ne vaut*.”

It remains the case, however, that in order for any gift of property to a trust to be effective, the gift must be complete (see [para.JER-26](#)).

Position of creditors

JER-10 Where the donor of property to a trust is resident in Jersey or has Jersey situated assets he may be declared en désastre (bankrupt) under the Bankruptcy (Désastre) (Jersey) Law 1990 (the “1990 Law”). Article 17 of the 1990 Law contains certain provisions dealing with transactions at an under value and preferences. Thus, any gift made within two years of the *désastre* may be set aside. Any gift made within five years of the *désastre* may be set aside if the donor was insolvent at the time or became insolvent in consequence of the gift.

Quite apart from statutory provisions, the Jersey court has applied customary law to hold that a gift made with the intention of defeating creditors and which renders the donor insolvent can be set aside at the request of the creditors (*Golder v Societe des Magasins Concorde Ltd (1967) JJ721*). Creditors would include contingent creditors and persons to whom the debtor had a legal obligation at the time he made the alienation such as the victims of negligence perpetrated prior to the date of the gift. In that particular case, the plaintiffs claim against the transferor predated the sale of the assets but there remains a risk that the Royal Court could extend the *ratio* of this case to set aside trusts which have been specifically established to defeat claims which might be made in the future against the settlor. This has been affirmed in the judgment of the Royal Court in the *Matter of the Esteem Settlement (2002) JLR 53*.

Hague Convention on the recognition of trusts

JER-11 The Hague Convention on the Recognition of Trusts extends to Jersey.

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Companies

General

JER-12 A significant number of companies are formed on the Island each year. The current law is contained in the Companies (Jersey) Law 1991, amended (the “1991 Law”), which is largely based on the UK Companies Act 1985. The 1991 Law is a comprehensive modern statute governing all aspects of the formation and administration of private companies in Jersey. There is, in addition, a growing body of case law relating to companies incorporated in Jersey although it is still relatively small compared to that of the UK and the Royal Court has tended to follow the principles established by English case law in those cases which have been brought before the court. In essence the concept is the same as in English law with shareholders of limited liability Jersey companies having their liability limited to the amount of the share capital of their shareholdings.

The 1991 Law

JER-13 The 1991 Law contains some 224 articles and it is not possible in a work of this nature to summarise the whole of its effect. However, major points are considered in the following text.

The constitution of a Jersey company is established by its memorandum and articles of association. The memorandum sets out details of its share capital, which may be designated in any currency, and the objects for which the company is incorporated, together with the

name of the company. However, the doctrine of ultra vires has been abolished (art.18) and accordingly after the 1991 Law the capacity of a Jersey company is not limited by anything in its memorandum or articles of association.

Incorporation is effected by registering the memorandum and articles of association with the Jersey Financial Services Commission (JFSC). The Companies (Amendment No.6) (Jersey) Law 2002 permits private companies to have a single registered member. The shareholders may all be nominees so that the identity of the beneficial owner of the company is not public information. Nevertheless, his identity must be disclosed, confidentially to the JFSC. The share capital may be increased at any time by special resolution. This requires a two-thirds majority at a general meeting of shareholders of which not less than 14 days' notice has been duly given (arts 11 and 90).

The concept of public and private companies was introduced by the 1991 Law. A company is a public company if it has more than 30 members or if it states in its memorandum that it is a public company. The 1991 Law imposes certain obligations on a public company which are not imposed on a private company. Thus, a public company must maintain a register of directors which is open to inspection by the public and its accounts must be audited and filed annually with the Registrar of Companies (arts 16, 17, 83, 104 and 106).

Incorporated cell and protected cell companies

JER-14 Part 18D of the 1991 Law (as amended by Amendment No.8, which came into force on 1 February 2006) introduced the concept of “cell companies” into Jersey. There are two types: the incorporated cell company and the protected cell company.

A cell company has the ability to create one or more cells within the company that have separate and distinct assets and liabilities. These cells will be used to carry separate and distinct businesses. Each cell will have a separate memorandum and articles and its own members. Members of the company will not necessarily be members of the cell. Although a cell may not own shares in its cell company, a cell can hold shares in other cells of the same cell company unless the articles specifically provide otherwise. A cell company may be public or private, a par value company or no par value company, a guarantee company, and can be a limited or an unlimited company. Provision can be made for cells to be dissolved or wound up in certain events.

Historically, the concept of a cell company was developed for use in relation to umbrella investment funds and to assist in the management of investment pools supporting separate lines of insurance business.

It is expected that Jersey cell companies will have a wider range of applications in financial services businesses and structured finance activities.

The articles of association regulate the internal proceedings of the company and the relationship between the shareholders and the directors. The articles may be altered at any time by special resolution.

The business of the company is managed by its directors. There is no obligation under the 1991 Law for directors to meet in Jersey (although in order to comply with economic substance requirements a Jersey tax resident company will need to demonstrate that it is ‘directed and managed’ in Jersey (see para.JER-62). Similarly, shareholders may meet anywhere. The company must, however, have its registered office in Jersey.

The duties of directors are set out in the 1991 Law (art.74). These are a duty to act honestly and in good faith with a view to the best interests of the company and to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. However, the members may unanimously authorise or ratify any act or omission in breach of these duties subject to solvency requirements.

The law as to what profits may be distributed by a company has been clarified (art.115). In essence, a company may make distributions:

- (a)out of its realised profits less its realised losses; or
- (b)out of its realised revenue profits less its revenue losses, whether realised or unrealised provided that the directors reasonably believe that, after the distribution, the company will be solvent and able to discharge its liabilities as they fall due; and
- (c)out of its unrealised profits less its losses, whether realised or unrealised subject to the sanction by the shareholders by special resolution and to safeguards concerning solvency and share capital.

Staying with the matter of share capital there are six particular provisions of interest as follows:

- (a)there is a prohibition on a company owning shares in its holding company (art.26);
- (b)fractions of shares may be issued (art.40);
- (c)non-voting shares may also be issued (art.92);
- (d)redeemable shares may be issued. Any share may be redeemable provided that there is at least one class of share which is not redeemable. It is also possible for a company to purchase its own shares. In each case, however, there are restrictions on the source of funds that may be used for the redemption or purchase as well as requirements as to solvency immediately following the redemption or purchase (arts 55 and 57);
- (e)a company may give financial assistance in connection with the purchase of its shares provided that certain conditions are complied with (“whitewash procedure”). These include the passing of a special resolution by the shareholders approving the assistance and a requirement as to share capital and solvency immediately following the giving of assistance (art.58); and
- (f)an offeror for shares may compulsorily acquire a minority holding if his offer has been accepted in respect of 90% of the shares (art.117).

A minority shareholder who can show that the affairs of the company are being conducted in a manner which is unfairly prejudicial to him may now apply to the Royal Court for relief (art.141).

The 1991 Law introduced provisions to deal with the winding up of companies. In essence, the law provides for a solvent winding up and an insolvent winding up. In the case of the former, the company passes a special resolution and files a declaration of solvency. The liquidation can be effected either by the directors or by a liquidator appointed by the shareholders. An insolvent winding up can also begin with a special resolution of shareholders. However, the Companies (Amendment No.8) (Jersey) Regulations 2022 introduced a new trigger for the insolvent winding up of a Jersey company. If a company is unable to pay its debts as they fall due and the creditor has (a) a claim of no less than £3,000 against such company, (b) evidence of the company's insolvency and (c) the consent of the company, then the creditor can issue an application to the Royal Court seeking an order to wind up the company. In either circumstances (i.e. whether the insolvent winding up is started by a special resolution or by an application to the Royal Court by a creditor), a creditors' meeting must be convened. At that meeting, the creditors may appoint a liquidator and a liquidation committee. The liquidator then winds up the affairs of the company and produces his accounts to a meeting of the creditors.

There is, however, no provision for a compulsory winding up. The nearest equivalent is a declaration of *désastre* under the 1990 Law which requires an application to the Royal Court supported by an affidavit that the company is believed to have assets but to be insolvent. The Viscount, an official of the Royal Court, is then appointed to conduct the *désastre* which is, in effect, a winding up of the company.

Provision is also introduced for a company or a director or shareholders to apply to the Royal Court for an order that the company be wound up on grounds that it is just and equitable (art.155). Typically this would be of assistance where there is deadlock in the administration of the affairs of a company. A company may also be dissolved, if a limited life company, on the expiration of a period of time or the happening of some other event as specified in the memorandum or articles of association.

Provisions also now enable the Royal Court to set aside transactions carried out at an undervalue or which amount to an unfair preference. In addition, the concept of wrongful trading has been introduced by the 1991 Law. If a company continues trading at a time when a director knew that or was reckless as to whether a creditors' winding up could not be avoided, that director may be personally liable for any debts of the company arising thereafter (arts 176, 177 and 178).

The Companies (Amendment No.6) (Jersey) Law 2002 (the "2002 Amendment") was the first major update of the 1991 Law. It introduced new forms of Jersey company whereby the liability of a member of a Jersey company may be limited by shares, limited by guarantee or unlimited; these are not mutually exclusive. In addition shares may be expressed to have a par value or no par value.

The 2002 Amendment allows two or more Jersey companies to merge and continue as a single company. The 2002 Amendment also introduced the concept of redomiciliation, whereby foreign bodies corporate may be redomiciled in Jersey and existing Jersey companies may be redomiciled as foreign bodies corporate. Further, since 2014 (the Companies (Amendment No.11) (Jersey) Law 2014) the 1991 Law permits the demerger of Jersey companies such that, subject to certain conditions and requirements being met, a Jersey company may now become two or more Jersey companies (which may or may not include the demerging company).

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JER-15 Investment funds

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Investment funds

JER-15 There is a wide variety of funds under management in Jersey including real estate funds, equities funds, bond funds, money market funds, commodities and futures funds. Derivative funds, traded endowment funds, feeder funds, umbrella funds, private equity, venture capital funds and emerging markets funds are also listed.

The establishment and operation of both open and closed-ended investment funds in Jersey is governed principally by the Control of Borrowing (Jersey) Order 1958 (COBO) and the Collective Investment Funds (Jersey) Law 1988 (the “CIF Law”).

Persons providing services to collective investment funds and unregulated funds are regulated by the Financial Services (Jersey) Law 1998 (the “Financial Services Law”). In order to provide such services as management or custody, a person must obtain a licence to conduct fund services business under the Financial Services Law.

In November 2007, the regulation of funds and functionaries of funds was substantially revised so as to simplify the administrative process. The changes bring most functionaries within the scope of the Financial Services Law. Fund administrators and other functionaries now need to obtain only a single license to carry on “funds services business” and are permitted to conduct their activities on a continuing basis without needing to obtain an additional permit each time they act for a different fund.

Expert funds

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The “expert fund” regime is designed to facilitate investment fund offerings to be made to professional and qualified investors and has been well received by the investment fund market since inception in February 2004. There is no regulatory review of an expert fund’s structure, documentation or promoter. An expert fund is authorised on a fast-track, self-certification basis (confirmed by the fund’s administrator) that complies with the Expert Fund Guide. An expert fund may be listed on a stock exchange that permits restrictions to be imposed on who may invest in the fund—provided such restrictions mirror the requirements for an expert fund.

Expert funds benefit from a “light-touch” regulatory regime and can be approved on an expedited basis. Once the expert fund certification has been filed with the JFSC together with the fund’s offer document, the JFSC timeline for approval of an expert fund is three working days. This is on the basis that the fund meets the published requirements or has received case-specific consent from the JFSC in advance for derogation from such requirements.

Jersey Private Funds

JER-17 Jersey has simplified its funds regime, providing for a single Jersey private fund product, known as the “Jersey Private Fund” (JPF). This replaces the three fund products which catered for private funds in Jersey, namely “COBO Only Funds”, “Private Placement Funds” and “Very Private Funds”.

Existing COBO Only Funds, Private Placement Funds and Very Private Funds may elect to convert into a JPF (but are not required to convert and, if they do not convert, will continue to remain subject to their current regulatory regime).

A JPF must have a consent issued under the COBO and subject to meeting eligibility and structuring requirements, may be established using a streamlined authorisation process.

Unregulated funds

JER-18 Unregulated funds are exempted from regulation under the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008 (the “Unregulated Funds Order”).

Funds that comply with the Unregulated Funds Order do not require approval from the JFSC and can be established on a same day basis by filing a notice with the JFSC. Unregulated funds are not monitored or regulated by the JFSC on an ongoing basis.

There are two types of unregulated funds in Jersey: Unregulated Eligible Investor Funds (UEIFs) and Unregulated Exchange Traded Funds (UETFs).

The defining feature of UEIFs is that all investors in the fund must qualify as eligible investors (as defined in the Unregulated Funds Order). UEIFs may take any form recognized under Jersey law and may be open or closed-ended funds.

The former UETFs may also take any form recognized under Jersey law; however, they must be closed-ended funds, listed on an approved stock exchange (or have applied for their shares or units to be granted such a listing) and, as the case may be, subject to the rules of the exchange on which they list. Since 1 April 2018, UETFs can no longer be established but may continue in existence or may need to convert into a regulated fund if they continue to be marketed to potential investors in the EU.

Marketing a fund in the European Economic Area (EEA) or the United Kingdom (the UK)—AIFMD requirements

JER-18A To enable fund managers based in Jersey to market Jersey-based funds to professional investors in EEA Member states or the UK either by using the existing private placement rules, or by virtue of an EU-wide marketing passport from such time as marketing passports become available, Jersey has implemented a regulatory infrastructure to comply with the Alternative Investment Fund Managers' Directive (AIFMD) (including as implemented in UK domestic law through the [European Union \(Withdrawal\) Act 2018](#)). The infrastructure consists of the Alternative Investment Funds (Jersey) Regulations 2012 (effective from 22 July 2013) (the Regulations), the AIF codes of practice (the AIF Code), and various amendments to existing codes of practice already in force. Pursuant to the Regulations, a Jersey fund that wishes to market into the EEA or the UK needs to obtain a certificate (an AIF Certificate), unless an exemption applies. The AIF Code incorporates the AIFMD requirements for private placement (such as disclosure, reporting and transparency). Unregulated funds may not be marketed into the EEA or the UK without converting to some form of regulated fund.

JER-19 The Jersey Foundation

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The Jersey Foundation

JER-19 The Foundations (Jersey) Law 2009 (the “Foundations Law”) permits Foundations to be created under the law of Jersey. Foundations are vehicles for holding assets.

A Foundation is traditionally viewed as being somewhere between a trust and a company. A Foundation must be established with one or more “objects”. With the sole caveat that the objects must be lawful, they can be charitable, non-charitable or a mixture of both. Permissible objects might include, for example, benefiting a particular person or class of persons or carrying out a specific purpose or holding a particular asset. Common reasons for the establishment of a Foundation include:

- carrying out charitable or philanthropic purposes;
- retaining and preserving specific assets;
- succession planning to enable family assets such as businesses to benefit the next generation without the need to physically divide that asset;
- holding an asset such as a company to carry out a specific transaction; and
- holding assets to benefit family members.

A Foundation is an incorporated body. This means that the Foundation itself exists in the same way that a person or company exists. Therefore a Foundation can hold assets and take court proceedings in its own name in the same way that a company may. This will have obvious benefits for any third parties wishing to contract with a Foundation since that third party will easily be able to ascertain the existence and status of the Foundation and be comfortable that it has full power to deal with its own assets.

In this respect a Foundation differs from a trust where it is the trustees of the trust who own assets and enter into contracts.

A Foundation's powers will be exercised by its council, which is similar to a company's board of directors. Under the Foundations Law, anyone can be a member of the council. There must be at least one member, but there is no statutory maximum. The founder of the Foundation (the person who provides the assets) may remain actively involved in the management of the Foundation by becoming a member of the council.

The founder could also ensure that trusted family advisers or friends are also council members and therefore have control. Council members do not have a fiduciary duty to people who may benefit from the Foundation but they do have duties towards the Foundation itself, similar to those of directors to companies.

However, the Foundations Law does require that at least one council member is registered under the Financial Services Law to carry on financial services business of this type. This person is referred to as the "qualified member". It is the responsibility of the qualified member to not only incorporate the Foundation, but also to maintain the records of the Foundation at its business address.

Unlike a company, there are no shareholders to hold the council to account. Instead this role will be carried out by the holder of another post known as the "guardian". The main job of the guardian will be to ensure that the council carries out its functions in order to achieve the objects of the Foundation. The Foundations Law expressly permits the founder (whether or not he is also a member of the council) or the qualified member of the council also to be the guardian. The requirement for a guardian distinguishes Jersey Foundations from Foundations in many other jurisdictions and is a mechanism to ensure the proper administration of Foundations and protection for those who are to benefit from the Foundation.

A Foundation must have both a charter and regulations. The charter is a public document but the regulations are private (save for the "abridged regulations" which are publicly available). The charter must state the name of the Foundation, the objects (although there is no need to identify any people who will benefit), the initial endowment and how the Foundation can be wound up. All other details may be included in the regulations. The regulations are a substantially private document and a Foundation will not be obliged to provide information about itself to any person other than as specifically required by the Foundations Law or as set out in its own regulations. However, following the introduction of the Disclosure Provisions, there is now a requirement for foundations to provide "abridged regulations" to the JFSC which are publicly available. "Abridged regulations" are those parts of the regulations of a foundation comprising the information required to be included in the regulations under arts 12 and 14 of the Foundations Law, but, importantly, not including any information from which a person can or may be identified. Under the DPI Law a foundations are also required to report "significant person" information on council members and

nominate a person who is resident in Jersey, a “Nominated Person”, who will act as interface with the JFSC.

The regulations can restrict the information that is provided to people who may benefit from the Foundation and therefore founders may prevent their children becoming aware of the existence of the Foundation until they reach a certain age or even until the founder’s death if the founder considers this to be appropriate.

The Foundations Law is drafted to ensure maximum flexibility and therefore may be a useful mechanism for holding assets if a trust is not considered appropriate or the founder wishes to maintain a level of control. The Foundations Law has been supplemented by regulations that deal with such matters as the winding up and mergers of Foundations, and the continuance of foreign law Foundations in Jersey. Foundations may also be more familiar than trusts to prospective founders from civil law backgrounds. The tax implications of the use of a Foundation and the control of a founder will of course need to be considered for each individual case.

Regulation of Investment Business

JER-20 The Financial Services Law regulates the conduct of investment business following the approach taken by the UK’s Financial Services Act 1986. It requires persons carrying on or holding themselves out as carrying on “investment business” in or from within the Island, and any company incorporated in the Island carrying on or holding itself out as carrying on investment business in any part of the world, to be registered with the JFSC unless the activity is an exempt activity. Non-registration or failure to act in accordance with the terms of registration under the Financial Services Law is a criminal offence. Broadly “investment business” includes:

- dealing in investments either as principal or as agent;
- discretionary investment management; and
- giving investment advice.

Examples of exempted activities include acting as a functionary of a collective investment fund, investment advice by a trustee, dealing by a company or trustee in connection with an employee share scheme and a series of exemptions for group company activities.

The JFSC has issued Codes of Practice which have been prepared and issued for the purpose of establishing sound principles for the conduct of investment business.

Regulation of Trust Company Business

JER-21 The Financial Services Extension (Jersey) Law 2000, which came into force on 27 November 2000, had the effect of renaming the Investment Business (Jersey) Law 1998 as the Financial

Services (Jersey) Law 1998 and extending its provisions to bring within it those who perform trust or company services. It made it an offence to carry out trust company business services in or from within Jersey without a licence after 2 February 2001. Now persons carrying on or holding themselves out as carrying on “trust company business” in or from within the Island, and any company incorporated in the Island carrying on or holding itself out as carrying on such business in any part of the world, must be registered with the JFSC unless the activity is an exempt activity.

Broadly, “trust company business” occurs where a person provides company administration services, trustee or fiduciary services, or services to foundations and in addition performs one or more of the following classes of activities:

- forms companies, partnerships or foundations;
- arranges or provides directors or alternate directors;
- arranges or provides a partner for a partnership;
- arranges or provides a member of a council of a foundation;
- arranges or provides a secretary to a company;
- provides a registered office for a partnership or company;
- provides a correspondence address for any person;
- arranges or provides a trustee for an express trust; or
- arranges or provides a shareholder or nominee.

Exemptions exist for guardians, curators, incidental providers of services, introducers, and global custodians, among others.

A certificate of authorisation to conduct trust company services can be obtained from the JFSC upon their satisfaction that the minimum standards of integrity, competence and financial standing prescribed under the Financial Services Law have been met. The application process is comprehensive. It requires wide ranging disclosure of the structure and organisation of the applicant and details of all persons employed by or associated with the applicant.

The application must be accompanied by a one-off application fee and the first annual registration fee.

The JFSC has issued Codes of Practice which have been prepared and issued for the purpose of establishing sound principles for the conduct of trust company and investment business.

The Codes of Practice accompanying the Financial Services Law require that a registered person must conduct its business with integrity, have the highest regard for the interests of its customers, organise and control its affairs effectively for the proper performance of its business activities and be able to demonstrate the existence of adequate risk management systems. The registered persons must satisfy the JFSC that they have an adequate span of control appropriate to the

nature of their business. This means that businesses entitled to control trust company business assets must be controlled by three appropriately skilled and experienced individuals (known as the “six eyes” principle). Competence is measured by academic qualifications (falling into tables prescribed under the law) and length of relevant experience (Minimum Relevant Experience or MRE).

There are three categories of trust company employee. Principal persons are category “A” employees. These tend to be:

- persons responsible for the overall activities and decisions of all employees;
- persons who make all significant policy decisions for trust company business affairs; or
- persons who have the authority to enter singly into any significant commitment on behalf of the trust company business customers.

Applicants for financial services business operating in, or to be provided via Jersey, must demonstrate that 75 per cent of category “A” employees have five years MRE and a “table four” qualification (such as STEP’s Diploma in Trust and Estate Planning or fellow or associate status of the Association of Chartered Certified Accountants or Chartered Institute of Bankers, etc). Category “B” employees tend to be those responsible to the principal persons but responsible themselves for the activities of category “C” employees who report to them. Category “B” employees may also make significant decisions about trust company business customer affairs. Seventy-five per cent of such category “B” employees must have three years MRE and a “table four” qualification. Category “C” employees are typically those who may be client facing but not material decision takers or those who perform a professional administrative role but are dependant upon superiors for decisions on technical matters or trust company matter decisions. Fifty per cent of such category “C” employees are to have “table five” qualifications (such as the Certificate of Offshore Administration, or Foundation Level of the Association of Chartered Certified Accountants etc).

There is a universal requirement that all employees involved in trust company business receive at least 25 hours continuing professional development per annum (pro-rated for part-time employees), five hours of which may be private reading study time. The provisions under the Financial Services Law and codes of practice are detailed and specific advice should be sought on its application to those performing, or seeking to perform, activities regulated by it.

Orders under the Financial Services Law have also prescribed requirements of trust company service providers concerning filing of accounts, auditing, insurance and capital adequacy.

In light of the MONEYVAL and Financial Action Task Force review of Jersey's anti-money laundering (AML) and countering the financing of terrorism measures the States of Jersey have recently made certain amendments to the Proceeds of Crime (Jersey) Law 1999 (the POC Law), the Proceeds of Crime Supervisory Bodies (Jersey) Law 2008 (the Supervisory Bodies Law) and the Money Laundering (Jersey) Order 2008 (the Money Laundering Order) in connection with the regulation of financial service businesses in Jersey (together, the Amendments).

As a result of the Amendments private trust companies, single family offices and governance entities will likely be considered to be carrying out a Schedule 2 Business (i.e. a business activity listed as a financial services business) for the purposes of the POC Law, the Supervisory Bodies Law and the Money Laundering Order, which means that they will be required to register with the JFSC and take measures to identify and forestall money laundering, terrorist financing and proliferation financing.

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JER-22 Other entities

European Cross-Border Estate Planning

Other European States

Jersey

Jersey

Part I General Law

Legal persons and organisations

Other entities

JER-22 Charities may be established by means of a trust constituted under the 1984 Law. Charities and other associations may also be constituted under the Loi (1862) sur les teneures en fidéicommiss et l'incorporation d'associations. Under this law, a body may be incorporated as an association which then has a legal persona. Such an association may own all types of property, whether immovable or movable and may also be left property under the will of an individual. Other entities such as clubs and unincorporated associations are generally regarded in the same way as under English law.

On 21 November 2014 certain parts of the Charities (Jersey) Law 2014 (the “2014 Law”) came into force.

Those parts were, amongst others, the:

- provisions which introduce the test for what is charitable (the “Charity Test”);
- provisions which allow for the establishment of the Jersey Charity Commissioner; and
- provisions which allow for the establishment of the Charity Tribunal.

The remaining parts of the 2014 Law came into effect on 1 May 2018 and 1 January 2019, meaning the 2014 Law is now fully in effect.

The 2014 Law provides a definition of “charity” and “charitable purposes”. An entity will be classified as a charity if (i) all of its purposes are charitable purposes, or purposes that are purely ancillary or incidental to any of its charitable purposes; and (ii) in giving effect to those purposes, it provides a public benefit (in Jersey or elsewhere) to a reasonable degree.

The Jersey Charity Commissioner holds primary responsibility for administering the Charity Test and the Charity Register, supervising the compliance by charity governors of their duties, seeking to enforce the requirements as to the restricted use of the word “charity” and related terms, and publishing and maintaining guidance on the operation of the 2014 Law, including guidance on the duties of governors and guidance on the Charity Test. The first in a series of guidance notes was issued by the Charity Commissioner in January 2018.

The Charity Register is divided into three distinct sections being General, Restricted and Historic.

The General section covers those charities which intend to solicit donations from the public. This section will be open for inspection to the public. The Restricted section includes those charities which are privately funded. Lastly, the Historic section contains the details of those charities which are no longer registered.

One particular point of interest is that there is no obligation on charitable organisations to become registered charities. However, if a charitable organisation wishes to claim tax benefits and refer to itself as a “Charity” it must become a registered charity.

In addition, a non-profit organization (NPO) which under the Non-Profit Organizations (Jersey) Law 2008 (as amended by The Non-Profit Organisation (Miscellaneous Amendments) (Jersey) Law 2022) is defined as an organisation that raises or distributes money or goods for “charitable, religious, cultural, educational, social or fraternal purposes with the intention of benefiting the public” is required to register with the JFSC. An NPO that is registered is not automatically subject to supervision by the JFSC however as only certain 'prescribed NPOs' will be subject to ongoing supervision. A prescribed NPO is defined in the Non-Profit Organizations (Prescribed NPOs – Additional Obligations) (Jersey) Order 2022 as “an NPO that, during the preceding 12 months, has (a) raised funds exceeding £1,000 from outside Jersey, Guernsey, the Isle of Man, England and Wales and Scotland *or* (b) disbursed funds exceeding £1,000 outside those jurisdictions”. A prescribed NPO will have to, amongst other things, prepare annual financial statements, have appropriate accounting systems and controls in place, keep records of owners, controllers and significant donors and take reasonable steps to identify other NPOs with whom it may be working, including the beneficiaries, activities and nature of the relationship in question.

JER-23 Immovable property

European Cross-Border Estate Planning

Other European States

Jersey

Jersey

Part I General Law

Forms of ownership

Immovable property

JER-23 Whereas in England a distinction is normally drawn between real property and personal property, the terms used in Jersey are immovable property and movable property. Immovable property in Jersey is held according to a public register maintained under the supervision of the Royal Court. Registration is proof of title subject to such matters as title by adverse possession and actions to set aside wills or contracts. All transactions in immovable property, including the registration of all mortgages, are held in open court with both parties to the contract being present either personally or through their attorneys. Immovable property may not be held directly by a Jersey proper law trust (art.11(2) of the 1984 Law). Where a foreign trust (i.e. one whose proper law is not that of Jersey) owns Jersey immovable property, the trust will be unenforceable (as opposed to invalid) in the Jersey courts in regard to that property only. A trust may, however, hold shares in a Jersey or other company which in turn owns Jersey immovable property.

Immovable property may be owned singly or by two or more owners. In the latter case, a distinction must be drawn between joint ownership and ownership in common. In the case of joint ownership, each owner has joint ownership of the whole property. The whole of the interest passes automatically to the survivor on the death of one joint owner. No alienation or hypothecation (mortgage) may be made without the consent of all the joint owners.

Ownership in common is ownership of an undivided specified proportion of the property. Such an interest can be sold or hypothecated and will form part of the owner's estate on his death. It will therefore pass in accordance with the terms of his will or on intestacy. Unlike the position in the UK, in Jersey there is a presumption in favour of ownership in common, and express words are needed for joint ownership to be created.

Any owner in common or joint owner is entitled to force a sale of the whole property if he so wishes. This results from the application of the maxim of Jersey law *nul n'est tenu de tester dans l'indivision* (*Le Sueur v Le Sueur* (1968) JJ 889).

Although it is not possible to have trusts of Jersey immovable property, it is possible for the life enjoyment (*usufruct*) to be separated from the reversion (*nue-propriété*). Thus, immovable property may be transferred or bequeathed to A subject to the life enjoyment of B. The customary law lays down the duties of a life tenant and reversionary owner in relation to the property.

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JER-24 Movable property

European Cross-Border Estate Planning

Other European States

Jersey

Jersey

Part I General Law

Forms of ownership

Movable property

JER-24 Such property may be owned by individuals, trusts, companies or other entities and may be owned either in common or jointly as above for immovable property. There is no concept of matrimonial or community property.

JER-25 Immovable property

European Cross-Border Estate Planning

Other European States

Jersey

Jersey

Part I General Law

Lifetime gifts

Immovable property

JER-25 Immovable property can only be effectively given by formal deed passed in open court before the Royal Court in the presence of both parties or their attorneys. As mentioned at [para.JER-23](#), title to immovable property depends upon the entry in the public register. There are no restrictions upon the ability to make lifetime gifts of immovable property and no taxes payable upon such gifts save for stamp duty upon registration of the deed.

JER-26 Movable property

European Cross-Border Estate Planning

Other European States

Jersey

Jersey

Part I General Law

Lifetime gifts

Movable property

JER-26 Movable property may be given without any special formality other than the transfer of ownership. Thus a gift of chattels must be accompanied by actual or constructive delivery. A transfer of registered shares is not complete until the shares have been registered in the name of the transferee although, following English equitable principles, it is likely that delivery of the share certificate and duly completed transfer form to the transferee will amount to an effective gift as the transferor will have done everything that is within his power to effect the gift notwithstanding that it remains for the company to register the transfer of shares.

As mentioned at [para.JER-9](#), dealing with trusts, the maxim of *donner et retenir ne vaut* applies in Jersey. This states that a gift is invalid where the donor retains the power to dispose freely of the thing given by him or where he remains in possession of the same. This latter point is subject to an exception where the donor retains a life interest in the thing given. In essence this emphasises the need for proper delivery of a chattel or transfer of title of intangible movable property.

There are no restrictions on the ability to make gifts and no tax is payable upon such gifts nor is any stamp duty payable upon transfers of movable property.

JER-27 Immovable property

European Cross-Border Estate Planning

Other European States

Jersey

Jersey

Part I General Law

Estates of deceased individuals

Immovable property

JER-27 The succession to immovable property in Jersey is governed by Jersey law as the *lex situs*, regardless of the domicile, nationality or residence of the deceased owner.

Rights of dower and *viduité*/life enjoyment

JER-28 Under the Wills and Successions (Jersey) Law 1993, as amended (the “1993 Law”), there is a distinction drawn between instances where a deceased dies leaving a will and where there is an intestacy.

Following the Wills and Successions (Amendment No.2) (Jersey) Law 2013, which came into force on 1 January 2014 (“Amendment No.2”), on the death of a spouse or civil partner, where the spouse or civil partner dies having left a will, the surviving spouse or civil partner is entitled to an indefeasible right of dower or life enjoyment over one-third of the immovable property which the deceased spouse or civil partner owned at his or her death. The right can be exercised in specie by the surviving spouse or civil partner occupying one-third of the property or it can be exercised by an enjoyment of one-third of the income derived from the property. The right gives the surviving spouse or civil partner an *hypothèque* (mortgage) over the property, so that any purchaser takes subject to the surviving spouse’s or civil partner’s dower/life enjoyment, unless the surviving spouse or civil partner releases his or her right as part of the sale.

Pursuant to Amendment No.2, *viduité* (i.e. the right of a widower to the life enjoyment over all of his deceased wife’s property, under certain circumstances) has been abolished.

Where a spouse or civil partner dies intestate, the provisions of art.5 of the 1993 Law take effect. Under art.5, where a spouse dies intestate as to the matrimonial home or a civil partner dies intestate as to the civil partnership home, the surviving spouse or civil partner is entitled to a life interest over that property, unless the surviving spouse or civil partner is otherwise entitled absolutely to the matrimonial home or civil partnership home (as the case may be) or the surviving spouse/civil partner was, at the date of death, living apart from the deceased spouse/civil partner and either the surviving spouse/civil partner had deserted the deceased spouse/civil partner without cause and such desertion was continuing or a decree of judicial separation with respect to the surviving spouse had been granted by a court to the deceased spouse, or a separation order with respect to the surviving civil partner had been granted by a court to the deceased civil partner (as the case may be).

Wills of immovable property

JER-29 There are strict rules as to the formalities required for the making of wills of Jersey immovable property and these are laid down in the *Loi (1851) sur les testaments d'immeubles*. The will must be dated, read aloud and attested in the presence of two witnesses of full age (18 years in Jersey) and capacity not being beneficiaries under the will one of such witnesses must fall within a defined category which includes a Jurat of the Royal Court, Jersey advocates, solicitors, a member of the States and a notary public. For wills executed outside Jersey the formalities required are the same save that one of the attesting witnesses must be a notary public.

A holograph will, i.e. one written entirely by the testator himself, does not require attestation but must be signed by the testator and should be dated. No particular formalities are required for revocation of a will of Jersey immovable property. Any manifest act of revocation, such as writing “cancelled” across a will, is sufficient. Subsequent marriage does not revoke a will.

Subject to the rights of dower/life enjoyment referred to above, there is, generally speaking, free power of disposal for a testator over his immovable property. The main limitation is that immovable property situate in Jersey may not be settled upon trust.

Where there is no will

JER-30 The rules for dividing immovable property on an intestacy were substantially amended by the 1993 Law, which set out to remove a number of perceived injustices in the pre-existing system. The 1993 law as amended deals with a number of situations and provides, in brief, as follows:

- (a) an individual who is not married or in a civil partnership and has no children—his heirs, normally his brothers and sisters, will take his immovable property in equal shares;

(b)an individual who has not married or been in a civil partnership but has children—the children inherit the whole of the movable and immovable estate in equal shares.

(c)a married couple or civil partners who have no children—each spouse’s movable and immovable estate will go to the other;

(d)married couples/civil partners with children—the spouse/civil partner and each of the children will inherit the deceased’s immovable property in equal shares and, further, if any of the deceased’s children have predeceased him but leaving children, their children will be entitled to take that portion to which their parent would have been entitled, in equal shares (the surviving spouse/civil partner will also have a right to the life enjoyment of the matrimonial/civil partnership home);

(e)a married couple/civil partners who, at the date of death, were not living together and where the surviving spouse/civil partner had deserted the deceased spouse/civil partner without cause and such desertion was continuing or there had been a decree of judicial separation granted to the deceased spouse with respect to the surviving spouse, or a separation order with respect to the surviving civil partner had been granted by a court to the deceased civil partner—the surviving spouse/civil partner will not take any part of the deceased’s immovable property and is treated as having died immediately before the deceased spouse/civil partner; and

(f)divorced couples and persons whose civil partnership has been dissolved—the surviving former spouse/civil partner does not take any part of the deceased’s immovable property but if there are children, such children inherit the immovable property in equal shares. If any of the deceased’s children have predeceased him but leaving children, then their children will be entitled to take that portion to which their parent would have been entitled, in equal shares.

From the introduction of the Wills and Successions (Amendment) (Jersey) Law 2010, illegitimate children now have full inheritance rights. These inheritance rights extend to both movable and immovable estate on intestacy and also give the right to claim *légitime* against a father’s estate for the first time. The effect of granting inheritance rights to illegitimate children has the effect of extending the scope of *légitime* claims. An illegitimate child under Jersey Law now has the same rights of succession as the legitimate issue of his or her parents.

JER-31 Movable property

European Cross-Border Estate Planning

Other European States

Jersey

Jersey

Part I General Law

Estates of deceased individuals

Movable property

JER-31 The devolution of movable property situated in Jersey depends upon the domicile of the deceased. It is not a very exact concept and many factors can influence the determination of a person's domicile. However, in essence, it means the jurisdiction which is regarded as being the deceased's permanent home.

Individuals domiciled outside Jersey

Wills of movable property

JER-32 A person who dies domiciled outside Jersey is subject to the law of his domicile at death with regard to his powers of testamentary disposal over movable property, whether such property is situated in Jersey or elsewhere. As regards the formalities for making a will, the Probate (Jersey) Law 1998 (art.29) provides that a will shall be treated as properly executed if, at the time of its execution or at the time of the testator's death, its execution conforms to either, the internal law enforced either in the territory where it was executed, or in the territory where the testator was domiciled, or in the territory where the testator was habitually resident, or in the state of which the testator was a national or the law of Jersey. This provision has effectively removed the need for affidavits of law to be produced to the court when applying for a grant unless the Will does not name an executor.

Where there is no will

JER-33 Where a person domiciled outside Jersey dies intestate leaving movable property situated in Jersey, the devolution of that property will be determined by the intestacy rules of the law of his place of domicile at death.

Individuals domiciled in Jersey

Wills of movable property

JER-34 A will of movable property by a Jersey domiciled individual must be signed by the testator in the presence of two independent witnesses who are of full age (18 years) and capacity not being beneficiaries under the will. It need not be read aloud as is required for a will of Jersey immovable property, nor need either witness be a qualified witness such as an advocate. A holograph will need not be witnessed.

There is no particular requirement for the revocation of a will. As with a will of immovable property, any manifest act indicating an intention to revoke the will is sufficient. A will of movable estate is not revoked by subsequent marriage.

Jersey customary law being derived from Norman law, a civil law jurisdiction, there were reserved rights for widows and issue of a deceased although they have been amended by the 1993 Law. In summary, as things now stand, where there is a surviving spouse/civil partner, but no issue, the surviving spouse/civil partner is entitled to the household effects and two-thirds of the rest of the deceased's net movable estate. Where there is a surviving spouse/civil partner and issue, the surviving spouse/civil partner is entitled to the household effects and one-third of the rest of the deceased's net movable estate and the issue are entitled to claim one-third of the rest of the net movable estate. Where a person leaves issue but no surviving spouse/civil partner, the issue are entitled to claim two-thirds of the deceased's net movable estate. All this is set down in art.7 of the 1993 Law. With regard to the amount that a surviving spouse/civil partner may claim, the provisions of art.7 do not apply if the spouses/civil partners were living apart at the date of death of the deceased spouse/civil partner and either the surviving spouse/civil partner had deserted the deceased spouse/civil partner without cause and such desertion was continuing, or a decree of judicial separation with respect to the surviving spouse had been granted by a court to the deceased spouse, or a separation order with respect to the surviving civil partner had been granted by a court to the deceased civil partner (as the case may be). Such of a deceased's movable property as his surviving spouse/civil partner or issue are not entitled to may be freely disposed of. Persons who are unmarried or not in a civil partnership, and surviving spouses/civil partners without issue may leave their estate to whomsoever they choose.

It should be emphasised that there is nothing to prevent a testator making his will in a form which defeats the above succession rights but the person in whom the right is vested may take action in the court to claim his share (*légitime*) at any time within a year and a day. It is uncertain whether the period runs from death or from the grant of probate and time does not run against minors. If a will is not challenged within the required period, it stands as drawn. Only a party who has been deprived of its legitimate rights can attack a will in this way and the will is simply reduced to the extent necessary to pay out those entitled. It remains valid and in effect in all other respects.

Where there is no will

JER-35

Where a person dies intestate as to movable estate leaving a spouse/civil partner but no issue, the surviving spouse/civil partner takes the whole of the net movable estate. Where there is a surviving spouse/civil partner and issue, the surviving spouse/civil partner is entitled to the household effects, other movable estate to a value of £30,000 and half of the rest of the net movable estate. The deceased's issue take the other half of the rest of the net movable estate. However, where a surviving spouse/civil partner was separated at the time of the deceased spouse's/civil partner's death and either the surviving spouse/civil partner had deserted the deceased spouse/ civil partner without cause and such desertion was continuing, or a decree of judicial separation had been granted to the deceased spouse with respect to the surviving spouse, or a separation order with respect to the surviving civil partner had been granted by a court to the deceased civil partner (as the case may be), the provisions by which the surviving spouse/civil partner is entitled to an interest in the deceased spouse's/civil partner's estate do not apply. The surviving spouse/civil partner is deemed to have died immediately before the deceased spouse/civil partner. Where the deceased was not married or in a civil partnership and had no issue, or was married or in a civil partnership but who is neither survived by a spouse/civil partner nor leaves issue, the movables are inherited by the next-of-kin. In the case of a person who leaves issue but no surviving spouse/civil partner, the movables are inherited by the issue.

JER-36 Immovable property

European Cross-Border Estate Planning

Other European States

Jersey

Jersey

Part I General Law

Estates of deceased individuals

Procedure for administration of estates

Immovable property

JER-36 Where there is a will, the will must be registered in the public registry of the Royal Court. Such registration provides proof of title and no more steps are required. Where there is an intestacy no action is required as the property vests automatically in the heirs in equal shares and as tenants in common by virtue of the 1993 Law. This can occasionally cause difficulties in proving title as no entry will appear in the public registry.

Movable property

JER-37 The Probate (Jersey) Law 1998 governs the grant of letters of administration and a grant of probate, and the distribution of the estate of the deceased person.

Where there is a will, the executors named in the will apply to the Royal Court for a grant of probate by producing the original will or a sealed and certified copy in the case of a will that has been proved abroad, and taking an oath before the Court. The grant of probate proves the right of the executors to the assets of the deceased and no one may release any assets of the deceased save on production of a grant of probate. The one exception relates to estates of persons domiciled outside Jersey where the movable property in Jersey is valued at under £10,000. In these circumstances the executors can rely upon production of a foreign grant of probate or other suitable evidence. The law is currently under review. The duty of the executors is to gather in

the assets, pay the debts and distribute the balance to those entitled under the will. In the case of a person who dies domiciled in Jersey, the executors have a year and a day from the grant of probate in which to administer the estate.

Where there is no will, the person entitled to administer the estate under the law of the domicile of the deceased may apply to the Royal Court for letters of administration. In the case of a Jersey domiciled individual, the person entitled to apply is the principal heir as determined by the rules established by Jersey law. For a non-Jersey domiciled deceased, an affidavit is required from a lawyer, qualified in the law of the domicile of the deceased stating who is entitled to administer the estate under that law if the probate documentation produced in the country of domicile does not state who can administer the estate. The affidavit must be lodged with the application for letters of administration. Again, the duty of the administrator is to gather in the assets, pay the debts and distribute the balance to those entitled under the relevant law of intestacy.

It is a criminal offence in Jersey to “intermeddle” by taking possession of or in any way administering the movable estate of a deceased person prior to a grant of probate or letters of administration being obtained.

See also para.[JER-69](#) regarding the Probate (Jersey) Law 1998.

JER-38 Property belonging to spouses/civil partners

European Cross-Border Estate Planning

Other European States

Jersey

Jersey

Part I General Law

International estate planning issues

Property belonging to spouses/civil partners

JER-38 When a married person dies the law governing how that individual's property should be dealt with is dependent upon two factors. First, the nature of the property concerned and, secondly, the domicile of the deceased spouse/civil partner.

As indicated at [para.JER-27](#), the succession to immovable property in Jersey is governed by Jersey law as the *lex situs* regardless of the domicile, nationality or residence of the deceased owner. Where immovable property is situate elsewhere than in Jersey it is unlikely that the Jersey courts would be called upon to consider the law governing how that land should devolve. However, in such circumstances, the Jersey courts would adopt the approach followed by the English courts in that succession to immovable property situate in another jurisdiction will be governed by the *lex situs*.

In relation to movable property, and as stated at [para.JER-31](#), devolution depends upon the domicile of the deceased. It is not an exact concept but, in essence, it means the jurisdiction which is regarded as being the deceased's permanent home.

JER-39 Forced heirship

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Other European States

Jersey

Jersey

Part I General Law

International estate planning issues

Forced heirship

JER-39 The rules relating to forced heirship concerning those who die domiciled in Jersey have been discussed briefly in [para.JER-8](#) and in [paras JER-28, JER-29 and JER-34](#). How those laws will be enforced in a foreign jurisdiction where there is property in that jurisdiction belonging to a deceased domiciled in Jersey is beyond the scope of this chapter. It will depend in no small measure upon the provisions of the law governing the jurisdiction in question.

Where a person dies domiciled outside Jersey, he is subject to the law of his domicile at the date of death with regard to his powers of testamentary disposal over movable property, whether such property is situated in Jersey or elsewhere. This is discussed at [para.JER-32](#). Where a person domiciled outside Jersey dies intestate leaving movable property situate in Jersey, the devolution of that property will be determined by the intestacy rules of the law of his place of domicile at the date of death (*see* [para.JER-33](#)).

Accordingly, forced heirship rules of a deceased person's domicile will ordinarily be effective in Jersey. However, it is possible to limit the effectiveness of such forced heirship rules through the use of trusts. Where a settlor disposes of assets during his lifetime by settling them on trust, the trust assets will not form any part of the settlor's estate upon his death. This may enable a settlor to avoid forced heirship rules which may be mandatory under the laws of his domicile, residence or nationality and which would otherwise dictate the persons to whom and proportions in which a settlor's estate will devolve. Article 9 of the 1984 Law as amended, was specifically enacted to provide that where a person domiciled outside Jersey makes a lifetime transfer of assets to a Jersey trust after 21 July 1989, no rule relating to inheritance or succession (such as forced heirship or *légitime* rights) will affect the validity of the transfer to the trust. This provision is without prejudice to the validity of transfer made before that time. However, this provision only provides

protection from actions by forced heirs and others who challenge the settlor's capacity to make the transfer in question. Such protection may not be effective should the settlor's disposition of assets be characterised, for instance, as a fraud. The 2012 Amendment to the 1984 Law expressly provides, *inter alia*, that art.9 does not validate any disposition of property that is neither owned by the settlor nor the subject of a power of disposition vested in the settlor; does not affect the recognition of the law of any other jurisdiction prescribing the formalities for the disposition of property; and does not validate any testamentary disposition that is invalid under the law of the testator's domicile at the time of his death. Further, unless the trust's assets are located in Jersey complications may arise. The place of residence of the beneficiaries is also relevant. Trusts can be extremely useful but, clearly, these are issues that need to be considered carefully by a potential settlor.

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JER-40 Immovable property

European Cross-Border Estate Planning

Other European States

Jersey

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Part I General Law

International estate planning issues

Immovable property

JER-40 The rules that will be applied in determining the devolution of immovable property situate in Jersey that is owned by a foreign resident, national or domiciliary are discussed at [paras JER-27–JER-30](#) and [JER-36](#). Devolution is determined under Jersey law by the *lex situs* regardless of the domicile, nationality or residence of the deceased owner. Subject to rights of a spouse's/civil partner's life enjoyment there is, generally, free power of disposal for a testator over his immovable property situate in Jersey. However, there are strict rules as to the formalities required for the making of wills of Jersey immovable property (*see* [para.JER-29](#)). On an intestacy, the rules set out in [para.JER-30](#) apply.

Where immovable property is situate elsewhere than in Jersey its devolution will be determined by the law of the jurisdiction in which the land is situate; the *lex situs*.

JER-41 Money laundering

European Cross-Border Estate Planning

Other European States

Jersey

Jersey

Part I General Law

International estate planning issues

Money laundering

JER-41 The Proceeds of Crime (Jersey) Law 1999 (as amended), inter alia, extended the money laundering offences to all crimes and should be read in conjunction with the Money Laundering (Jersey) Order 2008 (the 2008 Order). The Terrorism (Jersey) Law 2002 (as amended), also imposes additional reporting obligations where terrorism is suspected.

JER-42 Beneficial ownership and controllers register

European Cross-Border Estate Planning

Other European States

Jersey

Jersey

Part I General Law

International estate planning issues

Beneficial ownership and controllers register

JER-42 Under art.2 of the COBO, a company incorporated under the laws of Jersey must obtain consent under the COBO (COBO Consent) in order to issue shares for any purpose or admit any person to membership otherwise than by reason of the issue or transfer of shares.

With effect from 1 January 2017, every Jersey registered company has been issued with a new COBO Consent. Pursuant to this, before 30 June 2017, each Jersey registered company was under an obligation to inform the Jersey Companies Registry of current beneficial ownership and control information. Any change to beneficial ownership or control of a Jersey registered company must be notified to the JFSC within 21 days of knowledge of any such change. While the register of beneficial ownership kept by the Registrar is available to law enforcement agencies and tax authorities on request, it is not currently publicly available.

The provisions also apply to other legal entities to include incorporated limited partnerships, limited liability partnerships and separate limited partnerships.

With the introduction of the Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020 (the DPI Law), together with the Financial Services (Disclosure and Provision of Information) (Jersey) Order and the Financial Services (Disclosure and Provision of Information) (Jersey) Regulations (together the “Disclosure Provisions”) in January 2021, Jersey has adopted a revised statutory framework for reporting information on beneficial owners and controllers of certain entities. The entities affected include companies, incorporated limited partnerships, limited liability partnerships and foundations to the JFSC. The DPI Law does not apply to trusts, nor does it apply to limited partnerships established under the Limited Partnerships (Jersey) Law 1994. The Disclosure Provisions set out the information required to be reported to the JFSC about beneficial

owners and significant persons, with certain reportable information being made publicly available. Beneficial ownership information will remain private for the time being.

The DPI Law defines a beneficial owner of an entity in a manner consistent with the concept of beneficial ownership under the 2008 order.

The Disclosure Provisions require the reportable information to be provided to the JFSC on application to establish an entity and to be updated within 21 days of becoming aware of a change, error or inaccuracy in respect of information previously notified relates to: beneficial owner information, “significant person” information, and details of nominee shareholders arrangements (unless the proposed nominee is registered by the under the Financial Services Law). In addition, an entity has to nominate a person who is resident in Jersey, a “Nominated Person”, who will act as interface with the JFSC.

Entities must file an annual confirmation statement with the JFSC by the end of February each year verifying that the beneficial ownership information, significant person information and any other prescribed information provided to the JFSC in respect of such entity is accurate. The annual confirmation statement replaces the annual return which entities were previously required to submit to the JFSC.

JER-43 Execution

European Cross-Border Estate Planning

Other European States

Jersey

Jersey

Part I General Law

International estate planning issues

Execution

JER-43 Since coming into force on 8 June 2018, the Signing of Instruments (Miscellaneous Provisions) (Jersey) Law 2018 enables people to validly execute legal documents, such as a will and a power of attorney, when they are not physically capable of signing their name. The will or power of attorney must be read aloud to the person making the will and they must declare, in the presence of two witnesses, one of whom must be a local advocate, solicitor or notary public, that the will or power of attorney shall be signed by another person on his or her behalf.

The above law also amends the laws in relation to the signing of affidavits, powers of attorney and lasting powers of attorney (as governed by The Capacity and Self-Determination (Jersey) Law 2016).

Capacity

The Capacity and Self Determination (Jersey) Law 2016 (the “CSD Law”) came into force on 1 October 2018, bringing a much needed change to this area of law in Jersey.

The CSD Law introduces some important core principles:

- a person, must be assumed to have capacity, unless it is shown that the person lacks capacity in relation to the decision;
- a person is not to be treated as unable to make a decision unless all practicable steps to enable that person to make the decision have been taken without success;

- a person is not to be treated as unable to make a decision merely because the person makes an unwise decision;
- an act done, or a decision made, on behalf of a person lacking capacity must be done or made in the person's best interests; and
- before an act is done, or a decision is made which is restrictive of the person's rights and freedom of action, regard must be had to whether the purpose for the which it is needed can be achieved as effectively in a less restrictive way.

The CSD Law enables anyone who is over the age of 18 and who has mental capacity to put in place either or both of two types of lasting power of attorney (LPA). One deals with health and welfare matters and covers issues such as medical treatment and wishes relating to life-sustaining treatment (including the refusal of such treatment). The other covers property and financial affairs and can give power to pay debts, make provision for the payment of that person's, or their family's maintenance and benefit, or make financial gifts to charities or to people.

The Royal Court of Jersey can appoint a delegate where a person does not take the opportunity to draw up a LPA but then loses mental capacity. Whilst the Royal Court will always retain an overall supervisory power, there is an undeniable risk that the powers given to an attorney under an LPA, or to a delegate, in particular in respect of property and financial affairs, could be misunderstood or abused. There are steps that can be taken to minimise this risk, such as the Attorney or delegate obtaining professional advice so that they fully understand what they can and cannot lawfully do; including a clause in the LPA to consult with a third party so that there is some oversight over the actions of the Attorney; limiting powers to make gifts over a certain amount; and requiring a third party to be notified when the LPA is registered. It is recommended that the Attorney or delegate should keep accurate records of the assets and of their dealings with those assets.

An amendment made to the CSD Law by The Signing of Instruments (Miscellaneous Provisions) (Jersey) Law 2018 makes provision for affidavits, powers of attorney and lasting powers of attorney to be validly executed on behalf of a person who cannot physically sign their name, see [para.JER-43](#).

JER-60 Capital taxes

European Cross-Border Estate Planning

Other European States

Jersey

Jersey

Part II Taxation

Taxes

*Steve Meiklejohn, Partner and Josephine Howe, Partner*¹

Capital taxes

JER-60 There are no taxes on capital or wealth either during an individual's lifetime or on his death. There is no stamp duty levied on the issue or transfer inter vivos of shares in a Jersey company, save where that company owns Jersey residential real estate. Jersey does not levy taxes upon capital inheritances, capital gains or gifts, nor are there estate duties, except for probate duty upon the death of an individual of up to 0.75 per cent of (in the case of a Jersey resident individual) the value of the individual's estate or (otherwise) the value of the individual's estate in Jersey (which would include the value of any shares in a Jersey company). A goods and services tax was introduced on 6 May 2008 and currently is payable at five per cent, but this does not apply to non-resident international business.

Footnotes

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JER-61 Income tax

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Other European States

Jersey

Jersey

Part II Taxation

Taxes

Income tax

JER-61 As this work is not concerned with taxes on income as opposed to capital, the description of Jersey income tax which follows is extremely brief. It is merely intended to alert practitioners to the existence and general nature of the tax. Jersey has a simple tax structure that is contained in the Income Tax (Jersey) Law 1961 (the 1961 Law). Jersey's standard rate of income tax is 20 per cent (including resident partnerships and trusts with beneficiaries) and has remained at this rate for over 60 years.

JER-62 Zero/ten tax system

European Cross-Border Estate Planning

Other European States

Jersey

Jersey

Part II Taxation

Taxes

Zero/ten tax system

JER-62 The “zero/ten” tax system was introduced on 1 January 2009 by the Income Tax (Amendment No.28) (Jersey) Law 2007 and the Income Tax (Amendment No.29) (Jersey) Law 2007.

The law defines a “financial services company” as one registered, or holding a permit, by virtue of various Laws administered by the JFSC. These financial services companies are liable to pay an income tax at 10 per cent. The 10 per cent rate applies to the following entities:

- all entities carrying out banking business through a permanent establishment in the Island, whether through a Jersey company, through a branch or through some other structure;
- all entities carrying on the business or trade of trust business through a permanent establishment;
- all entities carrying on investment business, independent financial advice and similar activities through a permanent establishment; and
- all entities carrying on the business or trade of funds administrator or funds custodian through a permanent establishment.

All “non-financial services entities” are liable for the 0 per cent standard corporate tax rate, excluding utility companies, which pay income tax at 20 per cent.

Substance requirements in Jersey

Jersey's Taxation (Companies—Economic Substance) (Jersey) Law 2019 came into effect on 1 January 2019. The law establishes economic substance tests for Jersey tax-resident companies carrying on “relevant activities” and sanctions for non-compliance. Companies within the scope

of the above law must meet certain economic substance tests, including demonstrating that: they are “directed and managed” in Jersey; certain of their “core income generating activities” are undertaken in the Island; there is an adequate level of expenditure incurred in Jersey and (qualified) employees, physical offices and/or premises in Jersey, or an adequate level of expenditure on outsourcing to service companies in Jersey, proportionate to the activities of the company.

In addition, the Taxation (Partnerships – Economic Substance) (Jersey) Law 2021 as amended from time to time (the Partnerships Substance Law) sets out the economic substance rules applicable to partnerships, and came into force in Jersey on 8 October 2021. Partnerships registered after 1 July 2021 that are in scope of the Partnerships Substance Law will have to comply with the requirements under the Partnerships Substance Law from the date of the relevant partnership's registration. The Partnerships Substance Law only applies to "resident partnerships", regardless of whether those partnerships have been formed in Jersey or elsewhere, in relation to any "relevant activities" carried on by them which generate gross income. The Partnerships Substance Law stipulates that a "resident partnership" meets the economic substance test in relation to a relevant activity if (i) the partnership is managed in Jersey in relation to that activity; (ii) there are an adequate number of people physically present in Jersey and there is adequate expenditure and physical assets in Jersey; (iii) all of the partnership's core income-generating activities are carried out in Jersey; and (iv) the partnership's governing body is able to monitor and control the carrying out of any core income-generating activities carried out in Jersey for the partnership by another entity or partnership.

JER-64 European Union Code of Conduct on business taxation

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Other European States

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Part II Taxation

Taxes

European Union Code of Conduct on business taxation

JER-64 On 3 June 2003, the EU Council of Economic and Finance Ministers reached political agreement on the adoption of a Code of Conduct on business taxation (the “Code”). Jersey is not a member of the EU; however, in keeping with Jersey’s policy of constructive international engagement, it replaced the Jersey exempt company regime with the “zero/ten” tax system. In 2009, provisions relating to deemed distributions and full attributions in the “zero/ten” tax system (see para.JER-63) were held to be in conflict with the spirit of the Code. The deemed distributions and full attributions rules are personal tax anti-avoidance measures and they operate separately from the overall framework of the zero/ten tax system. The zero/ten system was amended in 2011 so as to remove the conflicting provisions.

JER-65 International business companies

European Cross-Border Estate Planning

Other European States

Jersey

Jersey

Part II Taxation

Taxes

International business companies

JER-65 Since 1 January 2006, the previously favourable treatment for an International Business Company (IBC) has no longer been available. Benefits accruing to those on an existing IBC regime have been progressively extinguished in line with the term of individual agreements made with the Comptroller of Revenue (the Comptroller) prior to 31 December 2005.

JER-66 Foreign incorporated investment companies

European Cross-Border Estate Planning

Other European States

Jersey

Jersey

Part II Taxation

Taxes

Foreign incorporated investment companies

JER-66 An income tax concession in relation to foreign incorporated investment companies was abolished with effect from 3 June 2008 for newly-formed companies and from 1 January 2009 for all other companies within this category.

JER-67 Jersey estate planning

European Cross-Border Estate Planning

Other European States

Jersey

Jersey

Part II Taxation

Principles of estate planning

Jersey estate planning

JER-67 As described in the section on taxes (see [para.JER-60](#) etc.) there are no taxes on death or gifts other than stamp duty. Accordingly, there is little need for Jersey residents to plan on how to minimise or avoid tax on their death.

JER-68 Trusts

European Cross-Border Estate Planning

Other European States

Jersey

Jersey

Part II Taxation

Principles of estate planning

Foreign estate planning

Trusts

JER-68 Jersey is, however, regularly used in connection with estate planning for persons resident or domiciled in different parts of the world. In many cases, this will involve the creation of a trust with Jersey-resident trustees. The trust may be fixed, discretionary or partially discretionary. The trust will often incorporate a wholly owned company, which may be incorporated in Jersey or elsewhere, so that investment or trading activities are carried on through the company.

The circumstances in which a Jersey trust may assist vary enormously according to the law and taxation rules of the jurisdiction with which the settlor is connected. However, some simple examples of where trusts may be useful are as follows:

(a) where assets are placed in a trust, legal ownership is transferred to the trustees and does not rest with the settlor or any individual beneficiary. Accordingly, upon the death of the settlor or a beneficiary, no legal title passes and there is no need for a grant of probate or similar formalities in any country;

(b) where a trust is discretionary a beneficiary has no asset or right which passes on death. This may avoid estate tax which would otherwise be payable;

(c) where assets are given away to a trust during the life of the settlor, the assets do not legally belong to the settlor on his death. This may enable the settlor to avoid any forced heirship rights under the law of his domicile, residence or nationality; and

(d) a trust may be useful where it is desired to keep a particular asset such as a family business within the family. By having legal title vested in the trustees of a trust,

fragmentation amongst a large number of second or third generation beneficiaries can be avoided as can the risk of a share of the asset passing outside the family upon the death of such beneficiaries.

There are of course many other cases where trusts or companies may be of assistance as part of overall estate planning.

The Probate (Jersey) Law 1998

JER-69 The Probate (Jersey) Law 1998 (the “Probate Law”) came into force on 2 January 1999.

If a person passes away leaving assets in Jersey which have a value of over £10,000, the asset holder is legally obliged to request that a Jersey grant of probate (if the deceased left a will) or grant of letters of administration (if the deceased did not leave a will) is produced to them to enable these assets to be released to whoever is named on that document as the deceased's personal representative. The grant gives the asset holder the assurance that they need to be able to take instructions from, and release the assets to, that named personal representative.

Jersey law has a requirement for the personal representative of a deceased person's estate to make a personal appearance in the Royal Court of Jersey in order to apply for the grant of probate or letters of administration and swear the relevant oath. If this person or persons cannot make this journey to Jersey, for example if they live the other side of the world or do not wish to travel, they will need to instead appoint a Jersey based agent, such as a solicitor, to make this appearance in the Court on their behalf.

The Probate Law provides for a “fast-track” procedure when the deceased dies domiciled in a specified jurisdiction (at present England, Wales, Scotland, Northern Ireland, Isle of Man and Guernsey) and where a corresponding grant of probate/letters of administration has already been issued in that jurisdiction. The application for a Jersey grant via the “fast-track” procedure must be made through a Jersey agent but effectively enables the Jersey Court to “re-seal” the already issued grant thereby reducing the time that it takes for a Jersey grant to be obtained and the costs involved.

In particular, the “fast-track” procedure provides that the oath can be sworn where the applicant lives, thus avoiding the need for the production of a power of attorney and the need for personal attendance of the Jersey resident lawyer or representative of the trust corporation.

Stamp duty is also payable to the Jersey Court when the application for the Jersey grant is made. It is charged at the rate of 0.5% of the date of death value of the Jersey assets (which is rounded up to the nearest £10,000 for probate purposes) on estates with a value of up to £100,000 and at a rate of £75 per additional £10,000 thereafter.

The Probate Law also provides that if a person releases assets of an estate of a person domiciled in England, Wales, Scotland, Northern Ireland, Isle of Man or Guernsey (where the value of the

assets does not exceed £10,000) without a grant of probate, such a person will have an indemnity against action by the deceased's estate or any beneficiary. In such circumstances, the person releasing the asset must have been provided with certain evidence and no caveat must be in force with respect to the deceased's estate.

The Probate Law brought Jersey into line with England as regards domicile of dependency. As regards the estate of a married woman who has died, her domicile shall be ascertained by reference to the same factors as an individual capable of an independent domicile. As regards the movable estate of a deceased minor, that minor shall have first become capable of having an independent domicile when (if at all) he has attained the age of 16 years or married under that age.

Under the Probate Law, the Jersey court can order the variation of a will of the moveable estate of a deceased individual within two years of the date of death of that individual.

It is not necessary for probate purposes in Jersey to ensure that the will being proved is formally valid in accordance with the law of the country within which the testator died domiciled. The testamentary document will be treated as properly executed if, at the time of its execution or at the time of the testator's death, its execution conformed to the internal law in force in the place where the will was executed, where the testator was domiciled, where the testator was habitually resident or in the state of which the testator was a national, or to the law of Jersey.

JER-70

European Cross-Border Estate Planning

Other European States

Jersey

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Part II Taxation

Anti-tax avoidance

JER-70 In view of the comparatively low level of taxation for Jersey residents, the need for anti-avoidance measures is not substantial. Nevertheless, art.134(A) of the 1961 Law provides that if he is of the opinion that the main purpose or one of the main purposes of a transaction is the avoidance or reduction of the liability of any person to income tax, the Comptroller may make such assessment or additional assessment on that person as he considers appropriate to counteract such avoidance or reduction of liability. The provision does not apply if the taxpayer can show that:

(a) avoidance or reduction of liability to income tax was not the main purpose or one of the main purposes for which the transaction was effected; or

(b) the transaction was a bona fide commercial transaction and was not designed for the purposes of avoiding or reducing liability to income tax.

The provision is of little relevance for non-residents who use Jersey as part of their estate or tax planning.

JER-71

European Cross-Border Estate Planning

Other European States

Jersey

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Part II Taxation

Double taxation relief

JER-71 Double taxation agreements (DTAs), sometimes known as double taxation treaties, are designed to help determine the tax residency status of a person or a company and protect against the risk of an individual or a corporate entity being taxed twice where the same income is taxable in two states.

Jersey has entered into DTAs with Cyprus, Estonia, Guernsey, Hong Kong, Isle of Man, Liechtenstein, Luxembourg, Malta, Mauritius, Qatar, Rwanda, Seychelles, Singapore, United Arab Emirates and UK. DTA negotiations have been requested/initiated/drafted with Bahrain, Botswana, China (PR), Ghana, India, Kenya, Lesotho, Malawi, Nigeria, Saudi Arabia, South Africa, Swaziland, Uganda, and Zambia. Partial DTAs are in place with Australia, Denmark, the Faroe Islands, Finland, Germany, Greenland, Iceland, New Zealand, Norway, Poland and Sweden. There is also a limited agreement with France, which deals solely with the operation of ships and aircraft.

JER-72

European Cross-Border Estate Planning

Other European States

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Jersey

Part II Taxation

Tax Information Exchange Agreements

JER-72 Tax Information Exchange Agreements (TIEAs) are bilateral agreements under which territories agree to co-operate in tax matters through the exchange of information. They enable governments to enforce their domestic tax laws by exchanging, on request, information relevant to a tax matter covered by the arrangements. They broadly follow the OECD Model Agreement on Exchange of Information on Tax Matters.

Currently Jersey has entered into TIEAs with the United States of America (June 2006), the Netherlands (March 2008), Denmark (June 2009), Greenland (June 2009), Germany (August 2009), the Faroe Islands (August 2009), Finland (August 2009), Norway (October 2009), United Kingdom (November 2009), Sweden (December 2009), Iceland (December 2009), Australia (January 2010), Ireland (May 2010), New Zealand (October 2010), France (October 2010), Portugal (November 2011), China (PR) (November 2011), Argentina (December 2011), Canada (December 2011), South Africa (February 2012), Czech Republic (March 2012), Mexico (March 2012), India (May 2012), Poland (December 2012), Austria (June 2013), Japan (August 2013), Turkey (September 2013), Latvia (March 2014), Slovenia (June 2014), Indonesia (September 2014), Switzerland (October 2014), Italy (January 2015), Hungary (February 2015), Romania (February 2016), Korea (November 2016), Belgium (July 2017), Chile (October 2018), Brazil (January 2019), Spain (awaiting ratification). Further TIEAs, where negotiations are advanced and draft agreements have been exchanged, are with Bulgaria, Kenya, Lithuania and Slovakia.

Since 1 June 2014 Jersey has also been a party to the OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters which provides for exchange of information on request on the same basis as the bilateral TIEAs.

Inter-governmental agreements

European Cross-Border Estate Planning

Other European States

Jersey

Jersey

Part II Taxation

Inter-governmental agreements

On 13 December 2013, Jersey and the USA signed an agreement to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (“FATCA”). The goal of FATCA is to enable the US Internal Revenue Service (IRS) to identify US persons (generally US citizens or residents) seeking to evade US taxation by holding assets in foreign (i.e. non-US) accounts, whether in their own name or via non-US structures such as trusts or funds. Under the terms of the agreement, Jersey financial institutions are required to report on an annual basis the identity of, and certain other information about, direct and indirect US investors in Jersey entities to the Jersey tax authority for onward transmission to the IRS.

On 22 October 2013 Jersey entered into inter-governmental agreement to improve international tax compliance and automatic exchange of tax information with the UK Government (the “UK IGA”), although from 2017 the Common Reporting Standard has taken over from the UK IGA.

On 29 October 2014, 51 jurisdictions (including Jersey and Guernsey), signed an agreement to automatically exchange information based on art.6 of the Convention on Mutual Administrative Assistance in Tax Matters. This agreement specifies the details of what information will be exchanged and when, as set out in the Common Reporting Standard (CRS). Many other countries have since agreed to become signatories. First exchanges of information under the CRS occurred in 2017.

The Comptroller now accepts reports submitted under the CRS, which include data to be reported to multiple jurisdictions (consolidated reports). It is still possible to submit single jurisdiction reports, however, separate FATCA and CRS reports must be submitted. The exchange of information with other countries under the CRS is governed in Jersey by the Taxation (Implementation) (International Tax Compliance) (Common Reporting Standard) (Jersey) Regulations 2015. These regulations set out:

- the role and responsibilities of Jersey financial institutions;
- the timescales for reporting information to the Comptroller;

- the penalties for non-compliance with the regulations; and
- certain exemptions for the exchange of information.

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JER-73 Enforcement

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Part II Taxation

Enforcement and exchange of information

Enforcement

JER-73 Once the Comptroller has raised an assessment to tax, the tax will become payable on the date specified in the assessment. There is a right of appeal to Commissioners of Appeal and from there to the Royal Court. Pending appeal, any tax which is not in dispute must be paid.

Article 42 of the 1961 Law states that proceedings for recovery may be instituted by the Treasurer of the States before the courts at any time after the assessment to tax has been finally settled. A certificate from the Comptroller is sufficient evidence of the assessment and the amount unpaid. A judgment of the court for tax may be enforced in the same way as any other civil judgment of the court. The measures of enforcement include distraint on assets and an arrest on wages.

JER-74 Exchange of information

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Part II Taxation

Enforcement and exchange of information

Exchange of information

JER-74 The Comptroller and his officers take an oath of office before the Royal Court which includes a prohibition on disclosure of information. However DTAs and TIEAs provide that the relevant taxation authorities may exchange information necessary for the carrying out of the provisions of the agreement or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are subject to the agreement.