

LexMundi

World Ready

Guide to Doing Business

Guernsey

Prepared by Lex Mundi member firm,
Mourant

Legal system

What is the legal system (civil law, common law or a mixture of both)?

Guernsey is not part of the UK but is a self-governing dependency of the Crown. This means that the Island has its own directly elected legislative assemblies, administrative, fiscal and legal systems and its own courts of law. Guernsey is not represented in the UK Parliament and has never been a colony of the UK or Overseas Territory. The constitutional relationship of Guernsey with the UK is maintained through the Crown and HM Government is responsible for the defence and international relations of the Islands.

Legislation is passed by Guernsey's States of Deliberation. Principal legislation made in Guernsey requires Royal Assent or sanction by The Queen in Council.

The Bailiwick of Guernsey includes Guernsey (and the nearby islands of Lihou, Herm and Jethou), Alderney and Sark and each of Guernsey, Alderney and Sark has its own separate legal jurisdiction as well as has its own legislature able to promulgate laws. Those laws, by their title, make clear whether they apply to the whole of the Bailiwick of Guernsey or just one or two islands.

Guernsey has a mixed legal system. The influence of common law principles is clear in modern company and commercial legislation but the roots of Guernsey's legal system are actually in the ancient customary laws of Normandy. In some cases, it can still be necessary to refer to medieval Norman or early modern French legal texts in court and in particular in areas such as land law and the laws of inheritance. The influence of French law can also be felt in areas of the law of contract, although the law of tort now largely reflects the law of England. Although English and other common law authorities are respected and often viewed as highly persuasive, they are not binding on Guernsey judges, who are free to adopt alternative solutions in appropriate cases.

Guernsey has a Royal Court, a Court of Appeal, a Magistrate's Court, a Juvenile Court, an Ecclesiastical Court and a Contracts Court. In addition, the Judicial Committee of the Privy Council hears appeals from the Court of Appeal. There are also a number of established tribunals including The Employment and Discrimination Tribunal.

The permanent members of the Royal Court are the Bailiff and the Deputy Bailiff (judges of law) and sixteen jurats (judges of fact). The language of the court is also mixed with both French and English remaining official languages of the law in Guernsey, though since the 1950s English has been the dominant source for the legal system.

Prior to Brexit, matters arising within Guernsey could form the subject of applications to the European Court of Human Rights however following Brexit, referrals to the European Courts should cease (albeit account may be taken of European Court of Justice Decisions and general principles of EU law).

Foreign investment

Are there any restrictions on foreign investment (including authorisations required by central or local government)?

Generally, the Island welcomes investment. Most foreign investment is not regulated. However, authorisation may be required for investment in regulated areas such as banking and financial services.

Licences are required for the engagement of staff in any sector in Guernsey. Due to the limited resources available in Guernsey, the government does not encourage labour-intensive inward investment controlled by non-residents, but does encourage a diverse range of industries including those in the digital and financial services sectors.

Residential occupancy of dwellings is also strictly controlled.

Are there any exchange control or currency regulations?

British currency is freely accepted in the Island. Guernsey has its own Guernsey pound, which comprises 100 pence and is at par with the British Pound (Sterling).

There are no exchange control or currency restrictions except those relating to anti-money laundering.

There are no restrictions on business transactions with nationals, residents or non-residents of Guernsey.

There are no restrictions on the transfer of money into or out of the Island (other than in respect of bringing cash into or out of Guernsey).

What grants or incentives are available to investors? Are any of these aimed specifically at foreign investors?

Guernsey does not provide any grants, subsidies or funds for foreign investors. Guernsey's long-standing tradition of political and economic stability, coupled with its low-tax regime have made it an attractive location for investment.

In order to establish a business in Guernsey, it is not necessary for a bank account to be maintained in the Island, but due diligence is utilised when opening up such an account. If a bank account is opened in Guernsey, there are no restrictions on its use for legitimate purposes.

Business vehicles

What is the most common form of business vehicle used by foreign companies to conduct business in your jurisdiction? In relation to this vehicle, please provide details on:

- **Registration formalities (including timing).**
- **Minimum (and maximum) share capital.**
- **Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities).**
- **Any restrictions on the rights that can attach to shares.**
- **Any restrictions on foreign shareholders.**
- **Management structure and any restrictions on foreign managers.**
- **Directors' liability.**
- **Parent company liability.**
- **Reporting requirements (including filing of accounts) and cost of compliance.**

The most common form of business vehicle used by foreign companies is a non-cellular company limited by shares. Shelf companies are not available in Guernsey.

Registration formalities. To incorporate a company in Guernsey, you must submit to the Registrar of Companies, inter alia:

- A copy of its memorandum and articles of incorporation;
- An incorporation fee currently set at £100; and
- Relevant application forms.

A company can be incorporated within 24 hours or a fee of £350 can be paid to incorporate a company within 2 hours.

Shares and share capital. There are no maximum or minimum share capital requirements. Shares may be denominated in any currency and issued in various classes, including redeemable shares. Shares may have a nominal value or no par value and may be issued for non-cash consideration.

Rights attaching to shares.

Rights attaching to shares are set out in:

- the Companies (Guernsey) Law, 2008 (the "**Companies Law**");
- the Company's articles of incorporation; and
- the shareholders' agreement (if any).

Foreign shareholders. There are no restrictions on foreign shareholders.

Management structure and any restrictions on foreign managers. Guernsey companies must have at least one director (which may be a corporate body). Directors can be executive or non-executive. There are no restrictions on foreign directors, although in regulated sectors such as banking and financial services, some locally resident directors will be required. Directors can, but need not, be resident in Guernsey. Guernsey's economic substance régime (see below) may also be relevant in the appointment of directors.

Directors' liability.

The directors of a Guernsey company have a range of obligations and responsibilities placed upon them. These arise principally under Guernsey customary law, under the Companies Law and under the company's articles of incorporation.

A person who has not been formally appointed as a director may be treated as a director where that person performs the functions of a director e.g. a de facto or shadow director – in such cases, they will be subject to the duties, responsibilities and liabilities of a director.

The directors owe their duties to the company as a whole and generally only the company may enforce them. All directors owe the same duties irrespective of directorship roles.

Under Guernsey customary law and the Companies Law, a director owes the following general duties to the company:

- the duty to act in good faith with a view to the best interests of the company;
- the duty to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
- the duty to exercise powers for proper purposes;
- the duty to avoid conflicts of interest;
- the duty to not misuse company money; and
- the duty to disclose interests.

The effect of a breach is dependent on the duty which has been breached. Directors can be disqualified for up to 15 years if it is considered that it is not in the public interest for them to be a director. Similarly, an individual may be prohibited from performing specified roles within Guernsey's financial services industry should their conduct breach policies established in statute and by the GFSC under powers conferred by multiple laws such as the Protection of Investors (Bailiwick of Guernsey)

Law, 2020, the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020 and the Banking Supervision (Guernsey) Law, 2020.

Parent company liability. Parent companies are not automatically liable for the debts or other liabilities of their subsidiaries, except in certain cases involving, for example, preferences or unlawful distributions.

Reporting requirements. A company must submit an annual validation to the Registrar of Companies. It must also notify all changes to its particulars such as:

- registered office; and
- memorandum and articles of incorporation.

All annual validations must be delivered to the Registrar of Companies by the end of February each year and must include the prescribed information. There is an annual fee payable with the annual validation (currently £250 for a non-regulated company but fees range from £250 to £1,000 depending on the type of company). It is an offence to fail to file an annual validation and late filing fees will apply if the return is submitted after the specified date.

Economic Substance: Guernsey has implemented the Income Tax (Substance Requirements) (Implementation) Regulations, 2018 (the **Substance Regulations**) to address the concerns of the EU Code of Conduct Group that certain Guernsey companies could be used to artificially attract profits that are not commensurate with economic activities and substantial economic presence in Guernsey. The Substance Regulations impose economic substance requirements on companies that: (a) are tax resident in Guernsey or, incorporated in Guernsey and are tax exempt and (b) have income from carrying on a relevant activity in respect of accounting periods commencing on or after 1 January 2019 (and every following accounting period). Essentially, a company which is in-scope of the Substance Regulations will have to demonstrate that it has adequate substance in Guernsey by: (a) being directed and managed in Guernsey (b) having adequate people, premises and expenditure in Guernsey and (c) conducting core income generating activities (CIGA) in Guernsey.

Employees

What are the main laws regulating employment relationships?

The main laws regulating the employment relationship are:

- The Employment Protection (Guernsey) Law 1998, as amended.
- The Conditions of Employment (Guernsey) Law 1985, as amended.
- The Sex Discrimination (Employment) (Guernsey) Ordinance, 2005, as amended.

There is secondary legislation covering:

- Minimum wage; and
- Employment and Discrimination Tribunal procedure.

Statutory provisions apply to employees whose employment requires them to work wholly or mainly in Guernsey. Mandatory rules of law may apply regardless of any choice of law in the employment contract.

Is a written contract of employment required? Are any agreements and/or implied terms likely to govern the employment relationship?

Written contracts of employment are not required. However, a written statement of certain employment terms (set out in the Conditions of Employment (Guernsey) Law, 1985) must be given to each employee within four weeks of employment commencing.

Terms of employment can also be recorded in or arise out of:

- Employee handbooks;
- Collective agreements (where a union is recognised); and
- A course of dealing between employer and employee.

Terms may also be implied into the employment relationship by common law.

The most common implied term is a mutual obligation of trust and confidence.

Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

Employees do not have a statutory entitlement to management representation or consultation in relation to corporate transactions, including redundancies and disposals.

It is good employment practice, and will reduce any potential unfair dismissal liability, to consult with staff in relation to business restructures, changes to terms and conditions etc. There is no equivalent of TUPE in Guernsey.

No consultation with trade unions is required. Whilst employees are protected against unfair dismissal due to their involvement with a trade union, there is no statutory recognition for trade unions in Guernsey and limited legislation relating to collective bargaining and industrial disputes.

How is the termination of individual employment contracts regulated?

Employees with more than one year's continuous service, have the statutory right not to be unfairly dismissed.

There are five potentially fair grounds for dismissal set out in law:

- Capability or qualifications;
- Conduct;
- Redundancy;
- Breach of statute; and
- Some other substantial reason.

An employer must also act reasonably in dismissing an employee.

The maximum award for unfair dismissal is 6 months' pay. There is no limit on the amount of a month's pay.

An employee who has been dismissed for an automatically unfair reason, (for example membership of a trade union) can claim unfair dismissal irrespective of his or her length of continuous service.

Wrongful dismissal may also be claimed where an employee has been given insufficient notice.

If the dismissal is tainted by sex discrimination, a claim under the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 may also be pursued. The maximum award for sex discrimination is 3 months' pay. The States of Guernsey have approved a policy letter regarding proposals for new multi-ground discrimination legislation. Introduction of the anti-discrimination law is expected to come into force in 2023.

Are redundancies/mass layoffs regulated? If so, please give details.

Redundancy is one of the potentially fair grounds for dismissal. Redundancy is defined by statute as the dismissal (including the non-renewal of a fixed-term contract) of an employee that is wholly or mainly attributable to the fact that:

- the employer has ceased or intends to cease to carry on the business for the purposes for which it employed the employee, or to carry on that business in the place where the employee was employed; or
- the requirements of the employer's business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the employee was employed, have ceased or diminished (either permanently or temporarily and for whatever reason) or are expected to so cease or diminish.

There is no statutory entitlement to redundancy pay in Guernsey.

There are no specific requirements to inform or consult with employees in relation to redundancies. However the States of Guernsey Code of Practice indicates that employees and (where appropriate) trade unions and staff associations should be consulted about redundancy before dismissal notices are issued. A failure to follow the Code does not render a person liable to proceedings, but the Code will be taken into account in unfair dismissal proceedings where relevant.

Do foreign employees require work permits and/or residency permits? If so, how long does it take to obtain them and how much do they cost?

From January 2021, all EU (excluding Irish), EEA and Swiss nationals seeking employment in Guernsey require work and employment permits before arriving. The same criteria is in place for non-EU nationals.

EU, EEA and Swiss nationals that have continuously resided in Guernsey for less than five years could apply for Pre-Settled status up until 30 June 2021, allowing them to stay on the Island until they reached the five years needed for Settled Status. The States of Guernsey will assess any later applications on a case-by-case basis.

The following do not require a work permit:

- British citizens or a British subject with the right of abode - but dependants of British citizens may require entry clearances/ visas;
- Citizens of the Republic of Ireland;
- Commonwealth citizens admitted with a certificate of entitlement to the right of abode in the UK;
- Commonwealth citizens admitted on the grounds of UK ancestry;
- A participant in the Youth Mobility Scheme;
- A business visitor from eligible countries for up to six months; and
- Other overseas nationals who have no restrictions attached to their stay – e.g. long term residents.

An initial application for a work permit of less than 1 months' validity currently costs £50. Applying for a work permit of more than a month costs £100 to £500 depending on the duration, with a maximum length of five years.

There are also laws regulating housing and the type of accommodation in which in-coming workers may reside.

Guernsey has a two-tier housing system and all accommodation in Guernsey is classified as Local Market or Open Market. Local Market accommodation is primarily preserved for people with an automatic right to live in Guernsey. However, foreign employees may also be permitted to live in

Local Market accommodation if they have an employment permit granted by the Population Management Office.

Population Management regularly update a list of 'In Policy' job roles that are of benefit the Island and eligible for employment permits. 'Out of Policy' applications can be submitted for skills not included on this list, but they are charged at a higher rate and there is no guarantee that an employment permit will be issued.

Employment permits are divided into the following categories:

- Short Term (up to nine months);
- Medium Term (up to five years. Non-renewable);
- Long Term (up to eight years)

The permits cost between £60 and £900 depending on whether the role is In/Out of Policy and the Term that is applied for.

Tax

There are no capital gains taxes or capital transfer taxes. There are also no death duties or inheritance tax besides "document duty" (similar to stamp duty in the UK). Guernsey does not levy a VAT or goods and service tax (GST). There is currently a review being undertaken where it appears likely that a GST will be implemented in the medium term.

Guernsey has a strong reputation for cooperation in relation to matters of tax and transparency and is regarded as a well-regulated jurisdiction with a commitment to transparency and an effective anti-money laundering environment.

Other attractions of the Guernsey tax system include an excellent working relationship between the finance industry and the Taxes Office which promotes openness and economic growth.

In relation to employees, what constitutes tax residency in your jurisdiction?

In Guernsey, for tax purposes, there are three different tax statuses. These are "Solely Resident", "Resident Only" and "Principally Resident".

- An individual resident in Guernsey for 91 days or more per year and not resident in any other place for more than 91 days per year of charge is "Solely Resident" in Guernsey.
- An individual resident in Guernsey for 91 days or more is "Resident Only" in Guernsey.
- An individual resident in Guernsey for 182 days or more is "Principally Resident" in Guernsey.

High Value Residency (HVR)

Tax Capping

There are two tax caps in Guernsey for residents. These are based on the source of the income that is earned by the resident.

For Guernsey source income the tax cap is currently £130,000, and for non-Guernsey source income it is £260,000. There is also a tax cap available to new residents that purchase property in the island, whereby they can qualify for a lower tax cap of £50,000 for their first four years of residency, noting that there are some terms that need to be met to qualify for this cap.

Income Tax

No minimum income tax contribution is required and high net worth individuals will be subject to Guernsey's general income tax rules and will pay tax at a standard rate of 20% on their worldwide income.

Social security payments in Guernsey are low compared to many jurisdictions and payroll savings can, therefore, be made by moving to Guernsey. It should be noted that currently non employed individuals in Guernsey are still required to make social security contributions on unearned income.

What income tax or social security contributions must the following pay:

- **Tax resident employees?**
- **Non-tax resident employees?**
- **Solely or principally resident employees?**
- **Employers, in relation to their employees?**

Resident employees

If an individual is resident, but not solely or principally resident in Guernsey, they are liable to pay tax on their total income, wherever that income may arise, unless they elect to pay the standard charge, which was £40,000 from 1 January 2021.

Employees must pay income tax on Guernsey source income. Income tax is charged at a rate of 20% although certain allowances which are currently available may in some cases reduce the tax paid to a smaller amount.

Employees must pay monthly social security contributions of 6.8% of gross monthly earnings (up to an earnings limit) and will need to complete an social security registration form.

Non-tax resident employees

Subject to any double tax treaties or directives, non-tax resident employees are liable to Guernsey income tax on:

- Businesses carried on in Guernsey;
- Offices or employments held or exercised in Guernsey (except as a director);
- The ownership of lands and buildings situated in Guernsey; and
- Any other source in Guernsey.

Non-tax residents may be liable to pay social security contributions depending on their working arrangements.

As a non-resident, employees are entitled to a proportion of allowances for each week that they are employed in Guernsey (except as a director) or are in receipt of a pension arising/accurring in Guernsey during the year.

Solely or principally resident employees

If employees are solely or principally resident in Guernsey, they are chargeable on their total income wherever it accrues, but additional relief may be claimed as follows:

- Relief in respect of double taxation on income arising in the United Kingdom;
- Relief in respect of double taxation on income arising in other territories with which Guernsey has a double taxation arrangement;
- Relief in respect of income tax paid in other countries;
- Relief for interest on money borrowed.

Employers

Employers must make monthly social security contributions of 6.7% of an employee's gross monthly earnings (up to an earning's limit).

In relation to business vehicles, what constitutes tax residency in your jurisdiction?

Generally, a company is tax resident in Guernsey if it is either:

- Incorporated in Guernsey; and/or
- Managed and controlled in Guernsey.

Please give details of the main taxes that potentially apply to a tax resident business vehicle (including rates).

Corporate Tax

The general rate of corporation tax is 0% although certain companies with permanent establishments in Guernsey, primarily banks and financial services companies which are regulated by the Guernsey Financial Services Commission, are taxed at 10%. With the exception that investment managers of collective investment schemes and general partners are largely subject to the general rate of 0%.

Certain utility companies and income from property (e.g. rent and property development) are taxed at 20%. Large retail businesses are also taxed at 20% where their profits are greater than £500,000.

Business Rates

Rates will be payable based on the rateable value of the premises occupied by the business. In Guernsey, the standard rate of corporate tax is currently 0% (for businesses with income from rental or development of Guernsey property it is 20%). As Guernsey is within the European Economic Area, import duty is only due on some direct imports from third countries. Excise duty applies to alcohol and tobacco products.

Stamp Duty

The Document Duty (Guernsey) Law, 2017 introduced a revised regime for the imposition of document duty on registered documents in relation to transactions which transfer an interest in Guernsey real property such as a conveyance or create a charge against such real property, i.e. a bond, except in defined circumstances. The legislation simplified the approach to the document duty regime as well as to:

- introduce anti-avoidance provisions
- introduce a formal appeal procedure against decisions of HM Greffier
- create offences of making false or misleading statements.

In addition, the Document Duty (Anti-Avoidance) (Guernsey) Law, 2017 came into force in 2017 creating a liability in respect of unregistered transactions such as the transfer of the share capital of a company which owns Guernsey realty.

The rates of duty applicable under both laws are graduated rates from 2% to 5.5% depending on the value of the transaction. In relation to bonds the rate is now 0.0% of the amount secured.

Administration

The income tax year is the calendar year, 1st January to 31st December.

Companies pay tax based on their estimated profits for the current tax year. A tax return is due by 30 November following the end of the relevant tax year. A system of tax deduction at source from wages and salaries, known as ETI, applies as from 2006. Individual tax returns can be completed between January to November and must also be submitted by 30 November. Note that there has been some relaxation of return dates recently due to Covid.

How are the activities of non-tax resident business vehicles taxed?

Non-tax resident vehicles may be liable to tax on income or profits arising from their activities in Guernsey.

Please explain how each of the following is taxed:

- **Dividends paid to foreign corporate shareholders.**
- **Dividends received from foreign companies.**
- **Interest paid to foreign corporate shareholders.**
- **Intellectual property (IP) royalties paid to foreign corporate shareholders.**

Dividends are taxable, but with an imputation credit for residents. Under the new tax regime there are new shareholder taxation provisions which broadly only affect individuals resident in Guernsey.

Dividends paid. Guernsey does not levy a withholding tax on dividends paid by Guernsey resident companies to non-Guernsey resident shareholders.

Dividends received. A Guernsey company will be required to pay tax at 0%, 10% or 20% (as the case may be) on dividends received from a foreign company.

Interest paid. Interest paid by a Guernsey company to any person who is not resident in Guernsey is generally exempt from Guernsey withholding tax.

IP royalties paid. Royalties paid by a Guernsey company to any person who is not resident in Guernsey are generally exempt from Guernsey withholding tax.

Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)? If so, please give details.

In terms of revenue protection, there are no rules on thin-capitalisation, but there is a general anti-avoidance provision.

Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

There are no controlled foreign company rules.

Are there any transfer pricing rules? If so, please give details.

There are no transfer pricing rules.

How are imports and exports taxed?

Guernsey collects two different duties and taxes on imported goods:

- Excise duty on alcohol, tobacco and fuel; and
- Common customs tariff (CCT) on all goods imported from outside the EU.

Excise duty is charged according to the quantity of alcohol or tobacco imported.

Customs duty is charged according to what the goods are and where they are imported from.

There is an extra duty charged on certain items imported from the USA.

Is there a wide network of double tax treaties? If so, please give details.

The Bailiwick of Guernsey is party to double taxation agreements with the United Kingdom, Jersey, Australia, Cyprus, Denmark, Faroe Islands, Finland, Greenland, Hong Kong, Iceland, Ireland, Isle of Man, Japan, Liechtenstein, Luxembourg, Malta, Mauritius, Monaco, New Zealand, Norway, Poland, Qatar, Seychelles, Singapore and Sweden. A Guernsey exempt company is not deemed to be resident in Guernsey for the purposes of the double tax arrangements. These agreements, except for those with the UK and Guernsey, follow the OECD model. They all enable a means of limiting the double taxation of incomes as well as providing for the exchange of information on request.

Competition

The Guernsey Competition & Regulatory Authority (**GCRA**) exercises powers in Guernsey conferred under the Guernsey Competition and Regulatory Authority Ordinance, 2012.

The telecoms, electricity and postal sectors are regulated by the GCRA, which is also responsible for administering and enforcing the Competition (Guernsey) Ordinance, 2012 which covers abuse of dominant position, anti-competitive practices and mergers and acquisitions.

Are restrictive agreements and practices regulated by competition law in your jurisdiction? If so, please give brief details.

The Guernsey Competition and Regulatory Authority Ordinance, 2012 prohibits:

- An undertaking from making agreements, arrangements or concerted practices with one or more other undertakings that have the object or effect of hindering, to an appreciable extent, competition in the supply of goods and services within Guernsey or any part of Guernsey;
- Abuse of a dominant position; and
- Certain mergers and acquisitions, unless prior approval is obtained.

The GCRA has the power to investigate businesses suspected of breaching the law. GCRA can order that offending agreements or conduct be stopped and levy financial penalties on businesses and individuals for the breach. In addition, third parties may be able to claim for damages, including punitive damages, in the Royal Court of Guernsey.

Mergers and Acquisition

The Competition (Prescribed Mergers and Acquisitions) (Guernsey) Regulations, 2012 require a merger or acquisition to be approved by GCRA in advance where:

- the combined applicable turnover of the undertakings involved in the transaction arising in the Channel Islands exceeds £5 million; and
- two or more of the undertakings involved in the transaction each has an applicable turnover arising in Guernsey, which exceeds £2 million.

Intellectual property

The Bailiwick of Guernsey Intellectual Property Office is responsible for administering all trade mark, design, patent, copyright and image rights registrations and activities and to provide information on the intellectual property laws enacted in the Bailiwick of Guernsey. There are 11 relevant pieces of legislation in the Bailiwick of Guernsey:

1. Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004;
2. Copyright (Bailiwick of Guernsey) Ordinance, 2005;
3. Trade Marks (Bailiwick of Guernsey) Ordinance, 2006;
4. Registered Patents and Biotechnological Inventions (Bailiwick of Guernsey) Ordinance, 2009;
5. Registered Designs (Bailiwick of Guernsey) Ordinance, 2005;
6. Image Rights (Bailiwick of Guernsey) Ordinance, 2012;
7. Registered Plant Breeders' Rights (Bailiwick of Guernsey) Ordinance, 2007;
8. Unregistered Design Rights (Bailiwick of Guernsey) Ordinance, 2005;
9. Unregistered Design Rights (Semiconductor Topographies) (Bailiwick of Guernsey) Ordinance, 2006
10. Database Rights (Bailiwick of Guernsey) Ordinance, 2005; and
11. Performers' Rights (Bailiwick of Guernsey) Ordinance, 2005.

In addition in 2020 and 2021, Guernsey took major steps forward in the fast-paced field of intellectual property by joining several conventions, agreements and treaties including:

- The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS);
- The Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks;
- The Paris Convention for the Protection of Industrial Property;
- The Patent Co-Operation Treaty (PCT);
- The Protocol Relating to the Madrid Agreement concerning the International Registration of Marks (Madrid Protocol);
- The WIPO Copyright Treaty (WCT);
- The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired or Otherwise Print Disabled; and
- The Geneva Act of the Hague Agreement concerning the International Registration of Industrial Designs;

Please outline the main intellectual property rights that are capable of protection in your jurisdiction. In each case, please state:

- **Nature of right.**
- **How protected.**
- **How enforced.**
- **Length of protection.**

Patents

Nature of right. Patents are governed by the Registered Patents and Biotechnological Inventions (Bailiwick of Guernsey) Ordinance, 2009, which is a re-registration law providing that any person, being the grantee of a patent in force in certain designated countries (including the United Kingdom, the United States of American and the European Union) may apply for the registration of the patent in Guernsey based on their existing registration overseas.

How protected. The right is protected by registration and the appropriate application form and fee must be submitted. In addition, since 1 January 2021, international patents (PCT) applications designating the UK have automatic effect in Guernsey without any requirement to register and further residents and businesses located in Guernsey can file new PCT applications with the UK Intellectual Property Office, the European Patent Office, or directly with the International Bureau.

How enforced. Patents are generally enforced in the Royal Court of Guernsey. The main remedies the court can grant are:

- injunctions;
- delivery up;
- damages; and

- account of profits.

Length of protection. The duration of the patent in Guernsey will reflect the length of time given to the patent in the original country of registration and is only valid as long as the original registration remains valid.

Trade marks

Nature of right. The Trade Marks (Bailiwick of Guernsey) Ordinance, 2006 enables registration in Guernsey of a trademark which has been registered in the UK or as a Community or an international trade mark, as well as primary registration of trademarks in Guernsey.

How protected. The right is protected by registration and the appropriate application forms must be completed and submitted together with any fee due. Community Trade Marks and international trade marks are also protected. Since the extension of the Madrid Protocol to Guernsey in January 2021, it is also possible to (i) file an international trademark application in Guernsey, as an office of origin, and (ii) designate Guernsey as a jurisdiction for registration (separate from the UK).

How enforced. The enforcement procedure and remedies available are generally the same as those available for other IP rights (injunction, delivery up, damages or account of profits).

Length of protection. Registration of a trade mark will be valid for a period of 10 years from the date of registration and may be renewed prior to expiration.

Registered designs

Nature of right. The principal legislation is the Registered Designs (Bailiwick of Guernsey) Ordinance, 2005 which provides for the re-registration of a design registered in certain designated countries (including the United Kingdom and most European countries as well as Community designs). The registration of a design gives the registered proprietor the exclusive right in Guernsey to use the design and any design which does not produce on the informed user a different overall impression.

How protected. The right is protected by registration. Application must be by way of prescribed form together with any fee payable.

How enforced. The enforcement procedure and remedies available are generally the same as those available for other IP rights (injunction, delivery up, damages or account of profits).

Length of protection. The registration will be valid for as long as the design is registered in the original country of registration.

Copyright

Nature of right. The Copyright (Bailiwick of Guernsey) Ordinance, 2005 protects rights in original literary, dramatic, musical, or artistic works, sounds recordings, films, broadcasts and the typographical arrangement of published editions.

In addition, in November 2014, the Berne Convention for the Protection of Literary and Artistic Works was extended to Guernsey such that any literary and artistic works that originate in Guernsey receive copyright protection in all of the member countries and vice versa. Since January 2021, Guernsey is also, by extension, party to (1) the Rome Convention which gives protection in performances for performers, in phonograms for producers of phonograms and in broadcasts for broadcasting organizations, (2) the Marrakesh Treaty which facilitates the production and international transfer of specially-adapted books for people with blindness or visual impairments, and the WCT which give certain economic rights to authors of works in the digital environment.

How protected. The protection subsists automatically when the work is created. Copyright is infringed by any person who, without the consent of the copyright owner, participates in any of the activities in which the owner of the copyright has the sole right to participate, although exemptions exist where there is fair use of the work for the purposes of, for example, private study, research, criticism, review or newspaper summary.

How enforced. The enforcement procedure and remedies available are generally the same as those available for other IP rights (injunction, delivery up, damages or account of profits).

Length of protection. The length of protection depends upon who produced the work and when it was published, but the basic period is the lifetime of the author and 70 years thereafter.

Image Rights

Nature of right. The Image Rights (Bailiwick of Guernsey) Ordinance, 2012 provides for image rights, being exclusive rights in any images associated with or registered against a personality that has been registered in Guernsey's Register of Personalities and Images. It also provides for moral rights of the person who embodies the personality (known as the 'personage'), including a right to object to derogatory treatment of the protected images associated with or registered against the registered personality. Image is broadly defined as including names by which a personage is known; the voice, signature, likeness, appearance, silhouette, feature, face, expressions (verbal or facial), gestures, mannerisms, and any other distinctive characteristic or personal attribute of a personage; or any photograph, illustration, image, picture, moving image, electronic or other representation of a personage.

How protected. A person claiming entitlement to the personality, whether it be the personage (ie a natural or legal person, a group or team or a fictional character) or its personal representative or a prospective proprietor, can apply for registration of that personality and be registered as the proprietor of the registered personality. Once a personality is registered, a separate application can be made to register an image against that registered personality. The fact of registration alone makes that person the legal owner of the registered personality and image rights and other rights therein.

How enforced. Image rights will generally be enforced through actions in the Royal Court of Guernsey and the remedies available are the same as those available for other IP rights (injunction, delivery up, damages or account of profits).

Length of protection. A personality will be registered for a period of 10 years from the date of registration, whereas the registration of an image only lasts for three years. Registration may be renewed for an unlimited number of further periods of three or 10 years, as the case may be.

Marketing agreements

Are marketing agreements regulated in your jurisdiction? If so, please give brief details in respect of the following arrangements:

- **Agency.**
- **Distribution.**
- **Franchising.**

Guernsey competition law prohibits business to business agreements that prevent competition. This is a broadly drafted ban. It can catch a wide range of agreements, from market sharing and price fixing cartels at one end to normal business arrangements, such as supply and distribution contracts, at the other. The competition law allows for exemptions on the basis of a balancing test, where procompetitive effects outweigh any negative effects on competition. But until

recently, the only way to obtain such an exemption had been to apply to the GCRA on a case-by-case basis. This process was time consuming both for businesses and for GCRA. It is also disproportionate in many cases given that the pro-competitive effects of large numbers of business agreements outweigh any negative effects. To address these issues, the Committee for Economic Development put in place regulations (Vertical Arrangements Block Exemption; VABE). The VABE "pre-exempts" so-called vertical agreements from the competition law prohibition, provided that certain conditions are met. Agreements that fall within the VABE do not need to be notified to the GCRA for clearance. The VABE is based on three key principles:

1. The prohibition on anti-competitive agreements does not apply to "vertical agreements" (the Exemption)
2. The Exemption applies provided that the parties' market shares are 30% or less
3. The Exemption applies provided that the agreement does not contain certain hard-core restrictions of competition

Taking each of the agreements highlighted above in turn:

Agency - There are no specific laws or regulations in Guernsey affecting this type of agreement, although to the extent the agreement contains any hard core restrictions, the prohibitions contained in the Competition (Guernsey) Ordinance, 2012 will apply.

Distribution- There are no specific laws or regulations in Guernsey affecting this type of agreement, although to the extent the agreement contains any hard core restrictions, the prohibitions contained in the Competition (Guernsey) Ordinance, 2012 will apply.

Franchising - There are no specific laws or regulations in Guernsey affecting this type of agreement, although to the extent the agreement contains any hard core restrictions, the prohibitions contained in the Competition (Guernsey) Ordinance, 2012 will apply.

E-commerce

Are there any laws regulating e-commerce (such as electronic signatures and distance selling)? If so, please give brief details.

The following laws relate to e-commerce:

The Electronic Transactions (Guernsey) Law, 2000, which facilitates electronic business and the use of electronic communications and electronic storage.

The Electronic Transactions (Electronic Agents) (Guernsey) Ordinance, 2019 came into force on 1 March 2019 to provide enhanced certainty in relation to the legal effect, validity and enforceability of a contract carried out by means of an 'electronic agent' in relation to the formation, execution, performance and termination of a contract. When the Electronic Transactions (Guernsey) Law was enacted in 2000, it was considered that the laws of agency and contract formation were 'sufficiently robust to encompass electronic agents'. However, in the interests of enhancing the appeal of Guernsey as a jurisdiction for businesses wishing to use electronic agents and smart contract technology (including enabling Guernsey to be the law of choice for commercial contracts in respect of the same) the States of Guernsey have legislated specifically for electronic agents and the legal effect of actions carried out by such means

The Data Protection (Bailiwick of Guernsey) Law, 2017 has implications for processing data collected via electronic sources such as the internet, direct marketing, the use of "cookies" and international data transfers.

Consumer protection laws are being proposed which would regulate the sale of certain goods and services by email, the internet and other means of communication over distance and would require the seller to provide certain specified information to consumers in relation to contracts to buy goods

and services concluded at a distance, and gives a consumer the ability to cancel the contract in certain circumstances.

Data protection

Are there any data protection laws? If so, please give brief details.

Data protection rights are governed by the Data Protection (Bailiwick of Guernsey) Law, 2017 (**DPL**). The DPL protects personal data in a manner equivalent to and consistent with the European General Data Protection Regulation (Regulation (EU) 2016/679) such that Guernsey residents enjoy equivalent rights over their data as their European counterparts.

The DPL regulates the processing of personal data, which is data relating to living individuals who can be identified from the data. There are additional conditions for processing special category data (such as data relating to race, political opinions and criminal records).

The DPL applies to data controllers who determine the purposes and means of processing personal data and data processors who are responsible for processing personal data on behalf of a controller and in accordance with the controller's instructions.

The DPL requires the data controller to ensure that the processing of personal data complies with the data protection principles namely, personal data is:

- 1) processed lawfully, fairly and in a transparent manner in relation to the data;
- 2) collected for specified, explicit and legitimate purposes and once collected, not further processed in a manner incompatible with those purposes;
- 3) adequate, relevant and limited to what is necessary in relation to the purposes for which the data is processed;
- 4) accurate and, where necessary, kept up to date, with reasonable steps being taken to ensure that personal data that is inaccurate, having regard to the purposes for which the data is processed, is erased or rectified without delay;
- 5) kept in a form that permits identification of data subjects for no longer than is necessary for the purposes for which the data is processed; and
- 6) processed in a manner that ensures appropriate security of the data, including protection against unauthorized or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

Rights of data subjects

By written request from a data subject, the data controller must provide information within 4 weeks of receipt, including the data held, the purposes of processing the data, the categories of data and to whom the data may be disclosed.

Data subjects also have the right, among other things, to:

- object to processing including objecting to processing for direct marketing purposes, historical or scientific purposes or for the purpose of public functions or legitimate interests;
- have inaccurate data rectified or destroyed;
- request the restriction of processing;
- request the transfer of personal information to another party;
- not be subject to decisions based on automated processing; and
- in certain circumstances, to withdraw consent.

Data breaches and fines

In Guernsey, the supervisory authority for data protection is the Office of the Data Protection Authority (**ODPA**) under the Data Protection Authority (Bailiwick of Guernsey) Law, 2017.

Organisations are required to notify the ODPA, through the Office of the Information Commissioner, of a personal data breach without undue delay and in any case within 72 hours of having become aware of a breach, unless it is unlikely to result in a risk to the rights and freedoms of natural persons. The relevant individuals may also need to be informed of the breach but only where the potential risk to their rights and freedoms is high.

The ODPA has wide powers to investigate alleged breaches of the DPL, issue enforcement notices and, ultimately, impose penalties of up to £300,000 or up to 10% of global annual turnover or total gross income for the preceding financial year (whichever is higher) to a limit of £10 million under the Data Protection Authority (Bailiwick of Guernsey) Law, 2017.

Product liability

Are there any laws regulating product liability and product safety? If so, please give brief details.

Product Liability is regulated by:

Tort law

A claim in tort can be pursued on the basis of negligent design and/or manufacture. The designer/manufacturer owes a duty of care to the end user not to expose them by virtue of common use of a product to an unreasonable risk of injury or damage to other property. A claim in tort may also be possible against a supplier/retailer if that entity assembled/ altered/repaired the product.

To succeed, the claimant must establish

- A duty of care owed to them by the defendant
- Breach of that duty
- Loss caused by the breach
- The loss was reasonably foreseeable

Contract

In the absence of an express term in the contract, an implied term that goods supplied are of reasonable quality and reasonably fit for purpose will be incorporated as a matter of common law. If breach of an express or implied term can be established, a claim can be pursued against the supplier or the product and there is no need to establish fault.

Damages will cover all losses flowing from the breach subject to rules regarding remoteness and foreseeability of damage.

Statutes

- There is no equivalent in Guernsey to the current UK consumer legislation. In the event of a dispute, the Guernsey court may look to ordinary contractual principles and relevant case law in any relevant jurisdiction.
- The States of Guernsey is proposing to enact legislation in relation to the sale and supply of goods and services. The intention is that it will be similar to the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 and the Sale and Supply of Goods Act 1994.
- There is a Trading Standards body in Guernsey offering consumers advice and a complaint investigation service. It also monitors the safety of consumer products but has no statutory powers of enforcement.
- The Trading Standards body is contactable by calling 01481 220379 or emailing tradingstandards@gov.gg.

Error! Unknown switch argument.