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Guide to Doing Business

Jersey

Prepared by Lex Mundi member firm, Mourant

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Legal system

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

Jersey is the largest of the Channel Islands. It is neither part of the United Kingdom nor the European Union but has a special relationship with both. Jersey is a dependency of the British Crown but remains separate in its identity from the other neighbouring islands. The Island is self-governing in all matters except defence, which is the responsibility of the United Kingdom. It operates a parliamentary democracy under a constitutional monarchy, with its own financial, legal and judicial systems. Legislation is passed by the States of Jersey. Primary legislation requires the consent of the Queen's Privy Council.

Jersey has a pluralistic jurisdiction, with influences from Norman customary law, English common law and modern French civil law. The language of the court is also mixed with both French and English remaining official languages of the law in Jersey, though since the 1950s English has been the dominant source for the legal system.

Jersey has a Royal Court, a Court of Appeal, a Magistrate's Court, a Youth Court and a Youth Appeal 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 twelve jurats (judges of fact).

Matters arising within Jersey may form the subject of applications to the European Court of Human Rights and the European Court of Justice and foreign judicial decisions can be enforced both within and outside the Island.

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 establishment of new businesses and engagement of staff in any sector in Jersey. Due to the limited resources available in Jersey, 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

The rate of inflation is 2.7% (at September 2019).

Are there any exchange control or currency regulations?

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

The exchange rate for the Jersey pound is (at 30 December 2019):
£1 = $1.31 (US)
£1 = 1.17 Euros

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 Jersey.

There are no restrictions on the transfer of money into or out of the Island.

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

Jersey does not provide any grants, subsidies or funds for foreign investors. Other than Jersey's low-tax regime there are limited investment incentives.

Financial Facilities

Banking. It is the Island's policy to only license banks which are in the world's top 500 banks. In order to establish a business in Jersey, 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 Jersey, 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.**

Jersey's long-standing tradition of political and economic stability, coupled with its low-tax regime have made it an attractive location for investment. The most common form of business vehicle used by foreign companies is a private limited liability company. This formation is due to Jersey's tax-neutral jurisdiction. Additional benefits include separate legal identity, limited liability for shareholders and ease of transfer ownership. Shelf companies are not available in Jersey. A company wanting to conduct business on the island will need to provide a great deal of information to the authorities in order to obtain the necessary consents and licenses.

Registration formalities. To seek consent to incorporation, a private company must submit to the Registrar of Companies, inter alia:

- A copy of its memorandum and articles of association;
- An incorporation fee currently set at £200;
- Relevant application forms.

The formation process is quick and can vary between 2 hours and 5 business days dependent upon the option selected, usually taking 2-3 business days. Same day incorporation is available for an additional expediency fee. A company must have a registered office in Jersey and a Compliance Questionnaire must be completed along with the requisite due diligence. Accounts need not be audited, but have to be filed with the Jersey revenue authorities.

Share capital. There are no maximum or minimum share capital requirements.

Non-cash consideration. Shares may be denominated in any currency and issued in various classes, including redeemable shares and shares for non-cash consideration.

- **Rights attaching to shares.** Rights attaching to shares are imposed by the:Companies (Jersey) Law 1991 (the "**Companies Law**");
- the Company's articles of association;
- the Shareholders' agreement (if any).

Foreign shareholders. A private company is permitted to have only one shareholder; a public company must have at least two. There are no restrictions on foreign shareholders.

Management structure and any restrictions on foreign managers. Private companies have a single-tiered board with at least one director. In certain circumstances, corporate bodies may act as directors of Jersey companies. Directors can be executive or non-executive, with varying roles or duties. 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 Jersey.

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

Directors should be entered in the register of directors but, in addition, a person who has not been formally appointed will be treated as a director where that person performs the functions of a director e.g. a de facto or shadow director. They may, therefore, be subject to the duties, responsibilities and liabilities of a director.

The directors owe their duties solely 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 Jersey customary law and the Companies Law, a director owes the following general duties to the company:

- Act in good faith with a view to the best interests of the company; and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
- Exercise powers for proper purposes
- Avoid conflicts of interest
- Not misuse company money
- Exercise skill and care
- 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 accrue a lifetime ban from Jersey's financial services industry should their conduct breach policies established in statute and by the JFSC under powers conferred in the Financial Services (Jersey) Law 1998.

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, transfers of assets at an undervalue or unlawful distributions.

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

- Registered office;
- Constitutional Documents.

All annual returns 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 return (currently £210). It is an offence to fail to file an annual return and late filing fees will apply if the return is submitted after the specified date.

Employees

What are the main laws regulating employment relationships?

The main laws regulating the employment relationship are:

- Employment (Jersey) Law 2003
- Employment Relations (Jersey) Law 2007
- Discrimination (Jersey) Law 2013

There is secondary legislation covering:

- Minimum wage
- Employment and Discrimination Tribunal procedure

Statutory provisions apply to employees whose employment requires them to work wholly or mainly in Jersey. 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 Employment (Jersey) Law 2003) 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)
- 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, except to the extent that the transaction involves collective redundancies. Collective redundancy consultation is required, by law, where 12 or more employees are proposed to be dismissed as redundant in a 30 day period.

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 Jersey.

Consultation may be required with union representatives if the employer has entered into a recognition agreement with a trade union.

How is the termination of individual employment contracts regulated?

Employees with more than 52 weeks' 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
- Some other substantial reason.

An employer must also act reasonably in dismissing an employee.

An unfairly dismissed employee is entitled to a financial award relative to the length of service he has with the employer. The maximum award is 26 weeks' pay. There is no limit on the amount of a week'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 length of continuous service.

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

If the dismissal is tainted by discrimination, a claim under the Discrimination (Jersey) Law 2012 may also be pursued.

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.

Employees (including those on fixed-term contracts) who have been continuously employed by their employer for at least 2 years are entitled to a statutory redundancy payment from the employer if they are dismissed on grounds of redundancy. The statutory redundancy payment is calculated as 1 week's pay per complete year of continuous employment with the employer. For this purpose, 1 week's pay is capped at an amount determined by reference to figures published by the States of Jersey Statistics Unit in respect of the mean average earnings of full-time employees in Jersey. As at 30 December 2019, the figure is £770.

If an employer proposes to make redundant 12 or more employees at one establishment within a period of 30 days, it must carry out statutory collective redundancy consultation. That consultation must commence at least 30 days before the first dismissal is to come into effect. Appropriate representatives must be appointed and consulted with, which includes the provision of mandatory information. A notification to the Minister for Social Security must also be made. Failure to collectively consult in accordance with statutory obligations will expose the employer to potential liability of up to 9 weeks' pay payable to each affected employee.

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?

Certain non-EU overseas nationals seeking employment in Jersey are required to obtain work permits and a visa prior to arriving in the Island. Despite the fact that Jersey is not affiliated with the EU and is not part of the UK (having a marginal relationship with the EU established under Protocol 3 to the Treaty to the Accession of the UK), Jersey authorities require a UK visa for non-EU overseas nationals seeking work due to the relationship between these jurisdictions.

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
- Nationals of members of the European Union (EU)/European Economic Area (EEA)
- Family members of EEA nationals may also work without permits but must obtain an EEA family permit to enter the country
- Swiss Nationals
- Commonwealth citizens admitted with a certificate of entitlement to the right of abode
- Commonwealth citizens admitted on the grounds of UK ancestry
- A participant in the Youth Mobility Scheme
- A minister of religion
- A business visitor
- 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 £58. An application for a work permit of 1 to 2 years currently costs £290. An extension to a permit will incur an additional cost.

There are also laws regulating 'housing qualifications' and the type of accommodation in which in-coming workers may reside. An employer may also therefore require permission from the Population Office in order to engage certain employees in the Island. This is because where residents can work and live in Jersey is determined by their residential and employment status as follows:

Entitled	Someone who has lived in Jersey for 10 years	Can buy, sell or lease any property	Can work anywhere and doesn't need permission to be employed
Licensed	Someone who is an 'essential employee'	Can buy, sell or lease any property, apart from assisted purchase or social rented housing, in their own name if they keep their Licensed status	Employer needs permission to employ a Licensed person
Entitled for Work	Someone who has lived in Jersey for five consecutive years immediately before the date their registration card is issued, or is married to someone who is Entitled, Licensed, or Entitled for Work	Can buy property jointly with an Entitled spouse/civil partner. Can lease Registered (previously Unqualified) property as a main place of residence.	Can work anywhere and doesn't need permission to be employed
Registered	Someone who does not qualify under the other categories	Can lease Registered property as a main place of residence	Employer needs permission to employ a Registered person

Tax

There are no capital gains taxes or capital transfer taxes. There are also no death duties or inheritance tax besides stamp duty on immoveable property. GST, a tax on goods and services, was introduced in 2008 and currently stands at a rate of 5% for local goods and services including those imported over a certain value (please see GST section below for further information).

Jersey 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 Jersey tax system include generous rules for the taxation of employee share ownership; capped Social Security payments; no stamp duty on equity transactions; and 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?

The tax legislation in Jersey does not provide statutory definitions of 'resident' and 'ordinary resident' in respect of individuals and thus regard is had by the Jersey authorities to the facts of each particular case and principles.

In general, the following may be considered:

- how long the individual spends in the Island within a stated period;
- whether the individual maintains a place of abode in Jersey;
- how habitual an individual's visits to the Island are;
- where the individual intends to establish their residence.

Visits to Jersey will not be regarded as occasional if they are for a period (or periods) equal in the whole to 6 months or more in the income tax year (beginning 1 January). An individual will be regarded as becoming resident based on annual visits to Jersey (so that their visits become in effect a habit of life) if they are for a substantial period (or periods) of time, even if a place of abode is not maintained in the island. Periods amounting to 3 months are considered by the government as "substantial" and visits after 4 years are considered "habitual".

High Value Residency (HVR)

High net worth individuals seeking residency in Jersey may be granted a HVR license based on the expected level of annual tax contribution to be made by the applicant. The object of the reduced tax is to attract high net worth individuals to invest their wealth in the Island. Consideration will be given to the total net worth of the applicant, in order to be satisfied that the applicant has sufficient wealth to generate the expected future tax revenues. HVR individuals that are new to the Island are taxed on the following scale:

- The first £725,000 of worldwide income (including Jersey based) will be taxed at 20% thereby accruing the £145,000 per annum minimum tax contribution
- All personal income over £725,000 will be taxed at 1%

Non-High Value Residents (HVRs)

Non-HVRs do not have to agree a minimum income tax contribution with the authorities. These individuals are subject to Jersey's general income tax rules and will pay tax at a standard rate of just 20% on their worldwide income.

Social Security payments in Jersey are low compared to many jurisdictions and payroll savings can, therefore, be made by moving to Jersey.

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

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

Tax resident employees

Employees must pay income tax on Jersey 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% of gross monthly earnings (up to an earnings limit) and will need to complete an income tax registration form.

Non-tax resident employees

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

- Earnings from employment where their duties are carried out in Jersey
- Jersey source investment income
- Income arising from property located in Jersey.

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

Employers

Employers must make monthly social security contributions of 6.5% of an employee's gross monthly earnings (up to an earning's limit).

In many instances, employees may also benefit from the favourable 'benefits in kind' rules that apply, for example, to share incentive schemes and proprietary investments in funds managed by them. Generally, any initial benefit obtained when purchasing such shares will be taxable but the subsequent growth in value will be free of Jersey tax. Taken together with the Social Security benefits, this means the tax treatment of such is attractive.

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

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

- Incorporated in Jersey;
- Managed and controlled in Jersey.

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 Jersey, primarily banks and financial services companies which are regulated by the Jersey Financial Services Commission, are taxed at 10%.

Certain utility companies and income from property (e.g. rent and property development) are taxed at 20%.

Goods and Services Tax (GST)

GST is charged on:

- Goods and services supplied in Jersey by businesses
- Total value of imported goods (inclusive of Customs and excise duties, the cost of packaging, freighting, and insurance)

GST is collected on imported goods worth more than £240. Businesses with a turnover of more than £300,000 must be registered for GST with the Taxes Office. The standard rate has increased to 5% since June 2011.

Some supplies are exempt for public policy reasons, or because they are difficult to tax accurately. Examples include:

- Financial services
- Insurance
- Postal services
- Medical and paramedical supplies made by registered professionals or institutions
- Supplies by charities

Business Rates

Rates will be payable based on the rateable value of the premises occupied by the business. In Jersey, the standard rate of corporate tax is currently 0% (for businesses with income from rental or development of Jersey property it is 20%). As Jersey 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

Stamp duty is payable on land transactions, including leases of more than nine year's duration, and on the taking of security over land.

Stamp duty is calculated on a sliding scale (between 0.5% and 3%) based on the value of the land transferred.

Stamp duties are levied on the transfer of immovable property (up to 1%).

Administration

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

Companies pay tax based on their accounting period ending in the previous tax year. A tax return is due within 30 days of its issue, and tax is then payable on assessment. A system of tax deduction at source from wages and salaries, known as ITIS, applies as from 2006. Individual tax returns are due within 60 days of their issue after the end of the tax year. For individuals, assessments are issued in September following the tax year, and tax is payable on assessment.

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 Jersey.

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 individual resident in Jersey.

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

Dividends received. A Jersey 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 Jersey company to any person who is not resident in Jersey is generally exempt from Jersey withholding tax.

IP royalties paid. Royalties paid by a Jersey company to any person who is not resident in Jersey sare generally exempt from Jersey 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?

Jersey collects three different duties and taxes on imported goods:

- Goods and Services Tax (GST) at 5%, which is payable by the importer at the same rate as if the goods were supplied within Jersey.
- Excise duty on alcohol, tobacco and fuel.
- Common customs tariff (CCT) on all goods imported from outside the EU.

Personal imports would not normally be charged GST if total costs are no more than £240 and there are no other duties or taxes involved.

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.

For exports, Jersey Post and UK Customs have agreed arrangements for VAT to be collected on goods as follows:

- The accounting of UK Import VAT on commercial consignments (excluding alcohol, tobacco and tobacco products) not exceeding £2,000, that would otherwise be chargeable on the goods on importation into the UK;
- Using agreed postal routes other than those through an Office of Exchange (a Post Office which is manned by UK Customs).

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

Jersey has a small number of double tax treaties. Those currently in place are with the UK; Guernsey; France; Estonia; Hong Kong; Luxembourg; Singapore; Isle of Man; Malta; and State of Qatar. 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.

Jersey also has a number of partial double taxation agreements. These are more limited than full agreements and generally provide for the avoidance of double taxation on certain income of individuals and income derived from the operation of ships and aircraft. Those currently in place are with Australia; The Faroe Islands; France; Greenland; New Zealand; Poland; Denmark; Finland; Germany; Iceland; Norway; and Sweden.

Competition

The Channel Islands Competition & Regulatory Authorities ("**CICRA**") performs the regulatory function of both the Jersey Competition Regulatory Authority ("**JCRA**") and the Guernsey competition and Regulatory Authority ("**GCRA**"). The organisation exercises powers in Jersey conferred under the Competition Regulatory Authority (Jersey) Law, 2001.

The telecoms and postal sectors are regulated by the JCRA, which is also responsible for administering and enforcing the Competition (Jersey) Law 2005.

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

The Competition (Jersey) Law 2005 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 Jersey or any part of Jersey;
- Abuse of a dominant position.
- Certain mergers and acquisitions, unless prior approval is obtained

Through the JCRA (and GCRA), CICRA has the power to investigate businesses suspected of breaching the law. CICRA 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 Jersey (or the Royal Court of Guernsey).

Mergers and Acquisition

The Competition (Mergers and Acquisitions) (Jersey) Order 2010 requires a merger or acquisition to be approved by CICRA where:

- It results in a share of supply or purchase of 25% or more being achieved. This threshold is intended to apply to 'horizontal mergers', i.e. where the parties are existing competitors, and their combined shares of supply or purchase equal or exceed 25%. So, for example, where one competitor supplies 15% of a particular category of goods or services in Jersey, and the other supplies 10%, the parties would need to apply if they wished to merge.
- One party has a share of supply or purchase of 25% or more and the other has a 'vertical' relationship with that party (for example, as a supplier to or customer of that party). So, for example, if a company with a share of the supply of bricks in Jersey of 25% or more wished to merge with a house builder, this would require an application for approval.
- One party has a share of supply or purchase of 40% of more, the merger will require prior approval, unless it qualifies for either of the two exemptions to Article 4 of the Order, contained in Articles 4(a) and 4(b). This is designed to deal with a situation where there is no horizontal or vertical relationship between the parties, but where the merger may nevertheless raise competition concerns. These types of mergers are referred to as

'conglomerate mergers'. An example may be if a major electrical supplier was to merge with a major telecommunications supplier

Intellectual property

The Intellectual Property (Unregistered Rights) (Jersey) Law 2011 ensures that there is good protection for works such as books, films, CDs and video games. It also deals more fairly with use of works by libraries or schools. Jersey is updating other intellectual property laws, including those that can protect inventions and brands created by Islanders and local businesses.

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 Patents (Jersey) Law 1957 which is a re-registration law providing that any person, being the grantee of a patent in force in the UK (including a European Patent being effective in the UK) may apply for the registration of the patent in Jersey.

How protected. The right is protected by registration and the appropriate application form and fee must be submitted in compliance with the Patent (Jersey) Rules 1982.

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

- injunctions
- delivery up
- damages
- account of profits

Length of protection. The duration of the patent in Jersey will reflect the length of time given to the patent in the UK.

Trade marks

Nature of right. The Trade Marks (Jersey) Law 2000 is also a re-registration law and enables registration in Jersey of a trademark which has been registered in the UK or the EU. There is, therefore, little room for the exercise of discretion in the law in terms of registration. However, the law does provide that registration may be refused on the grounds that the trade mark contains or consists of a geographical name or surname connected with the Island.

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 Mark Regulations have effect in Jersey and international trade marks are also protected.

How enforced. The enforcement procedure and remedies available are generally the same as those available for patents.

Length of protection. The length of protection will be for such period as the original registration allows and no longer.

Registered designs

Nature of right. The principal legislation is the Registered Designs (Jersey) Law 1957 which provides for the re-registration of a UK registered design. The registration of a design or any title or interest in a design gives the registered proprietor the copyright in the registered design, i.e. the exclusive right in Jersey to make or import for sale or for use for the purposes of any trade or business, or to sell or hire any article in respect of which the design is registered whether in Jersey or elsewhere.

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 patents.

Length of protection. The duration of the right will be for the same period as the design is protected in the UK.

Copyright

The UK Intellectual Property Office (UKIPO) approved Jersey's entry into International Convention for the Protection of Literary and Artistic Works (Paris Act 1971), more frequently referred to as the Berne Convention, in January 2014.

The Berne Convention allows for copyright protection without any formalities, such as registration. In addition, the convention establishes the principle of mutual international recognition of copyright protection and enforcement by parties.

This is a major step forward for Jersey in the fast-paced field of intellectual property (IP) and is a consequence of the Intellectual Property (Unregistered Rights) Jersey Law 2011 (the Law). Examples of unregistered rights include: rights in literary, dramatic, musical, cinematographic and artistic works.

Nature of right. The Intellectual Property (Unregistered Rights) (Jersey) Law 2011 completely replaced and modernised previous copyright law in the Island. The current law is provided by an extension to the Island of the UK Copyright Act 1911. Prior to this law, Jersey relied almost entirely on the copyright statutes of the UK to provide its copyright laws. At present, however the principal Jersey Law on copyright is based upon the Copyright Act 1911, even though the UK has now introduced more up-to-date laws. Copyright may exist in "works" of dramatic, artistic, musical or literary nature as well as (by judicial precedent) computer software.

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 patents.

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 fifty years thereafter.

Confidential information

Nature of right. This right is based on common law principles. The information must be confidential in nature and communicated in circumstances importing an obligation of confidence. The holder of the right can take action against any party who is under a duty of confidence to it with regards to the confidential information.

How protected. A court action for breach of confidence would be based on a breach of contract or equity.

How enforced. Damages may be available for a breach of confidence.

Length of protection. There is no fixed period, although the information must remain confidential in nature for the protection to continue.

Marketing agreements

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

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

Agency - There are no specific laws or regulations in Jersey affecting this type of agreement, although to the extent the agreement contains any potentially anti-competitive term, the prohibitions contained in the Competition (Jersey) Law 2005 will apply.

Distribution- There are no specific laws or regulations in Jersey affecting this type of agreement, although to the extent the agreement contains any potentially anti-competitive term, the prohibitions contained in the Competition (Jersey) Law 2005 will apply.

Franchising. - There are no specific laws or regulations in Jersey affecting this type of agreement, although to the extent the agreement contains any potentially anti-competitive term, the prohibitions contained in the Competition (Jersey) Law 2005 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 Communications (Jersey) Law 2000, which facilitates electronic business and the use of electronic communications and electronic storage.

The **Data Protection (Jersey) Law 2018** has implications for processing data collected via electronic sources such as the internet, direct marketing, the use of "cookies" and international data transfers.

The **Distance Selling (Jersey) Law 2007** regulates the sale of certain goods and services by email, the internet and other means of communication over distance. This Law requires 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 (Jersey) Law 2018** ("**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 Jersey 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.
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 for example, 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.

In certain circumstances, to withdraw consent.

Data breaches and fines

In Jersey, the supervisory authority for data protection is the Data Protection Authority ("**DPA**") under the Data Protection Authority (Jersey) Law 2018 (the "**Authority Law**").

Organisations are required to notify the DPA, 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 DPA 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 Authority Law.

Product liability

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

Product Liability is regulated by:

The common law of tort

A claim may succeed if the purchaser can show that
- the seller or manufacturer fell below reasonable standards;
- this failure caused loss to the purchaser; and
- the seller or manufacturer knew that inspection of the goods before reaching the purchaser would be unlikely.

The purchaser may be entitled to damages.

Contract
A remedy may be available to put the purchaser in the same position as he would have been in if the contract had been properly performed. Economic loss or damages should be recoverable.

Statutes

- **The Consumer Safety (Jersey) Law 2006** protects consumers from consumer goods that are not "safe" in the context of the nature of the goods and the duration for which they will be used. The law imposes a duty on producers not to supply goods that are not safe and on distributors to act with due care to ensure consumer goods are safe. The law also permits the issue of "safety notices" and the seizure of unsafe goods. Breach of the statutory duties or failure to comply with a safety notice is an offence, punishable by imprisonment or a fine. The **Supply of Goods and Services (Jersey) Law 2009**, a number of terms are implied into contracts for the sale of goods and services by operation of that legislation. However, as these are in effect implied warranties.

The law is primarily concerned with contracts for the sale of goods, enhancing the position of the consumer through the introduction of certain automatically implied warranties as to satisfactory quality, title, description and disclosure of defects.

However, what will be of more relevance to Jersey law firms, trust companies, banks and the financial services industry as a whole, are the provisions of the Law dealing with the supply of services, which impose the following warranties and terms (unless they are expressly excluded or varied):

- a warranty that the service will be carried out with reasonable care and skill;

- a warranty, if the time for the service to be carried out is not fixed by the contract or left to be fixed in a manner agreed by the parties to the contract or determined by the course of dealing between the parties, that the service will be carried out within a reasonable time; and

- an implied term, if the price of the service is not determined by the contract or left to be determined in a manner agreed by the parties to the contract or determined by the course of dealing between the parties, that the person benefiting from the services shall be bound to pay a reasonable price.

Whilst the operation of customary law previously had the effect of implying such terms to some extent, from 1 September 2009 these terms received statutory force. The warranty as to care and skill automatically applies to all contracts, whilst the warranty for time of performance and the implied term as to price, apply only in the absence of express wording in the contract or an established course of dealing between the parties.

Exclusion

A breach of any of the terms implied by the law will give rise to a remedy in damages. The law does however, provide that the terms may be excluded or varied in the following ways:

•by express agreement between the parties, although an express term will only negate a warranty under the law if it is inconsistent with it and the implied warranty that a service will be carried out with reasonable care and skill cannot be excluded or resulting liability restricted;

•by the course of dealing between the parties; or

•by such usage as binds both parties to the contract.

There would appear to be a degree of ambiguity in the wording of the provisions governing exclusion of the implied terms and the statute does not provide any further clarification as to their interpretation. However, it is likely that a single clause in a relevant agreement will (if appropriately worded) be sufficient for the suppliers of a service to exclude the new terms, provided that such clause expressly negatives the relevant warranty under the law in that it is clearly inconsistent with it. Suppliers of professional services may, however, want to consider whether there could be any factor that would militate against a general exclusion of the statutory implied terms, either due to rules of professional conduct to which they are subject or simply due to the perception which might result from, for example, an exclusion of any warranty as to quality of service

It is worth noting that the law provides scope for the States to introduce changes to it in the future. The States have wide-ranging powers under the law to exempt certain contracts from the provisions of the law, impose additional terms and restrict or prohibit exclusion of the terms implied by the law. They could, therefore, remove the current ability to exclude the statutory warranties if it was felt that their routine exclusion was leading to abuse of consumer rights.

Indeed, such restrictions have been brought into effect in relation to the exclusion of certain seller's warranties under contracts for the sale of goods and suppliers warranties underline purchase contracts, and (as noted above) to prevent mitigation or exclusion of a supplier's implied warranty in a contract for provision of services that the service will be supplied with reasonable care and skill. None of these restrictions, however, apply to:

• contracts of insurance;

• contracts relating to intellectual property rights;

• contracts relating to the formation, constitution or dissolution of a body corporate or partnership; or

• contracts relating to the creation of transfer of securities or interests in securities.