

Private client law in Bermuda: overview

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TAXATION

Tax year and payment dates

1. When does the official tax year start and finish in your jurisdiction and what are the tax payment dates/deadlines?

The official financial year runs from 1 April to 31 March.

Bermuda does not assess any taxes on income, profits, dividends, gifts or capital gains. There are, therefore, no relevant tax payment dates or deadlines.

Bermuda maintains an exempted undertaking regime under which certain companies, partnerships and other entities can apply to the Minister of Finance for a guarantee that they will remain exempt from the payment of the taxes listed above should any one or more of those taxes ever be introduced in Bermuda. At present the guarantee is granted and is effective up until 31 March 2035. It has been extended in the past.

Domicile and residence

2. What concepts determine tax liability in your jurisdiction (for example, domicile and residence)? In what context(s) are they relevant and how do they impact on a taxpayer?

Domicile

Domicile does not play any significant role in determining tax liability in Bermuda.

Residence

While certain taxes payable in Bermuda are clearly linked to residence (for example payroll tax and land tax) these are not significant considerations in the private client context (see Question 5).

Other

Not applicable.

Taxation on exit

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

Bermuda does not impose any form of exit or repatriation tax on an individual when he leaves the jurisdiction, whether temporarily or permanently.

Temporary residents

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

Bermuda does not impose any particular or special tax rules on temporary residents.

Taxes on the gains and income of foreign nationals

5. How are gains on real estate or other assets owned by a foreign national taxed? What are the relevant tax rates?

There are no taxes assessed on capital gains on real estate or other assets owned by foreign nationals. There is, however, a land tax, which is assessed on Bermuda real estate semi-annually. The tax is linked to the notional annual rental value of each property and is payable by an owner of real estate in Bermuda.

The rates for land tax are as follows:

- Up to BM\$11,000: 0.8%.
- Over BM\$11,000 to BM\$22,000: 1.8%.
- Over BM\$22,000 to BM\$33,000: 3.5%.
- Over BM\$33,000 to BM\$44,000: 6.5%.
- Over BM\$44,000 to BM\$90,000: 12%.
- Over BM\$90,000 to BM\$120,000: 25%.
- Over BM\$120,000: 47%.

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

Under the Payroll Tax Act 1995 and the Payroll Tax Rates Act 1995 (as amended), payroll tax is charged quarterly on remuneration paid, or assessed by employers to employees (and deemed employees) by every employer and self-employed person in Bermuda. For these purposes, remuneration includes cash and any form of benefit (for example pension contributions, stock options, housing allowance and profit-sharing). The maximum tax bracket is 15.5%, applicable to taxpayers with an annual payroll greater than BM\$1 million and exempt undertakings. The employer can withhold up to 6% from remuneration paid to the employee. There are no taxes assessed on income received by foreign nationals who are not employed in Bermuda and subject to the payroll tax legislation and no withholding tax.



Inheritance tax and lifetime gifts

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

Inheritance

There is no direct tax on inheritance in Bermuda. However, stamp duty is assessable on the value of the deceased's property in Bermuda (that is, BM\$, land and shares in local companies). The value of the estate must be disclosed on oath on any application for a Grant of Probate or Letters of Administration to the Supreme Court of Bermuda, and is liable to be assessed for stamp duty on the issue of the Grant of Probate (for stamp duty rates, see *Question 8*).

Stamp duty can be avoided if:

- The estate comprises assets that are entirely exempt from stamp duty (for example, foreign currency).
- An application for a Grant of Probate or Letters of Administration can be avoided (for example, by holding assets in joint tenancy with others with the intention that those assets remain in the ownership of the surviving joint tenant owners (see *Question 36*).

Lifetime transfers/gifts

There is no direct tax on lifetime transfers, or gifts of property or assets in Bermuda. However, stamp duty is assessable on the value of the Bermuda property transferred. The stamp duty is payable within a certain period of the date of the document of transfer (usually 30 days).

Voluntary transfers of interests in Bermuda real estate and shares in privately held local companies (that is, Bermuda companies that do not hold taxation exemption certificates, nor are listed on the Bermuda Stock Exchange) are generally assessed to stamp duty based on the value (*ad valorem*) of the interest being transferred.

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

Tax rates

On death. The stamp duty rates on the issuance of a Grant of Probate or Letters of Administration (that is, following death) are as follows (*Head 2, Schedule to the Stamp Duties Act 1976*):

- Up to BM\$100,000: nil.
- Over BM\$100,000 to BM\$200,000: 5%.
- Over BM\$200,000 to BM\$1 million: 10%.
- Over BM\$1 million to BM\$2 million: 15%.
- Over BM\$2 million: 20%.

Lifetime transfers/gifts. Stamp duty on lifetime transfers of Bermuda property, other than cash (including BM\$), is assessed on the true (that is, open market) value of the property (*Head 17, Schedule to the Stamp Duties Act 1976*):

- Up to BM\$100,000: 2%.
- Over BM\$100,000 to BM\$500,000: 3%.
- Over BM\$500,000 to BM\$1 million: 4%.
- Over BM\$1 million to BM\$1.5 million: 6%.
- Over BM\$1.5 million: 7%.

Stamp duty on lifetime transfers of non-Bermuda property is also assessed on the open market value of the property transferred, at a

rate of 1%. There is an exception for instruments to which an international business (as defined by the Stamp Duties (International Businesses Relief) Act 1990 is a party or instruments executed by a local trustee that do not dispose of Bermuda property (*section 46C, Stamp Duties Act 1976*).

Tax free allowance

Property passing on death attracts no stamp duty on the first BM\$100,000 (see *above, Tax rates*).

Exemptions

Stamp duty is not assessed on the value of the following classes of assets passing on death:

- Bequests to surviving spouses.
- Bequests to registered charities (registered as charities under the Charities Act 2014) or to such other bodies or organisations that the Minister of Finance determine to be charitable.
- The value of a deceased's interest in Bermuda real estate that was designated exempt from stamp duty under section 47A of the Stamp Duties Act 1976 the "Family Homestead" designation).
- Assets comprised within a deceased's estate that do not fall within the definition of "Bermuda property" in the Stamp Duties Act 1976.

Techniques to reduce liability

A taxpayer can reduce (and in some cases eliminate) liability to stamp duty arising on the issuance of a Grant of Probate or Letters of Administration in respect of his estate by using one or more of the following techniques:

- Obtaining a Primary Family Homestead Certificate in respect of the taxpayer's interest in Bermuda real estate.
- Lifetime transfers/gifts to individuals, whether outright, in part, for life or to be held jointly.
- Lifetime transfers/gifts to trusts.
- Leverage, that is, securing debt against a particular asset to reduce the equity held in that asset. For example, stamp duty is only assessed against the equity (market value less secured debt) of a deceased's interest in Bermuda real estate.

While lifetime transfers/gifts of some types of assets attract stamp duty, the rates applicable to those transfers are considerably lower than the rates that might be assessed if those assets pass on death (see *above, Tax rates*). The fundamental question faced by individuals is whether to:

- Pay some stamp duty in their lifetime and have their estate avoid a larger stamp duty charge following their death; or
- Pay nothing now and have their estate suffer the larger assessment following their death.

Other

There are no other ways to reduce liability to stamp duty.

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

There are no direct inheritance or gift taxes in Bermuda but stamp duty may be assessed on the value of Bermuda property, irrespective of the deceased's nationality, residence or domicile (see *Questions 7 and 8*).

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

Stamp duty is assessed on the value of Bermuda property transferred to Bermuda trusts. The rates applicable to transfers of property to Bermuda trusts have been amended in the last few years, and are now (*Head 40, Schedule to the Stamp Duties Act 1976*):

- Up to BM\$50,000: nil.
- Over BM\$50,000 to BM\$200,000: 5%.
- Over BM\$200,000 to BM\$1 million: 10%.
- Over BM\$1 million: 15%.

There is an exception for instruments executed by a local trustee that do not dispose of Bermuda property, which are not chargeable to stamp duty under Head 40 (*section 46C of the Stamp Duties Act 1976*).

See also *Questions 7 to 8*.

Taxes on buying real estate and other assets

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

Purchase and gift taxes

Individuals not holding Bermudian status (non-Bermudians) must be granted a Licence to Acquire Land in Bermuda by the Minister responsible for Immigration in Bermuda before they can lawfully purchase and hold Bermuda real estate. A non-Bermudian can acquire Bermuda real estate by inheritance but must, within prescribed periods, either sell the Bermuda real estate or obtain a Licence to Acquire Land to lawfully retain legal and beneficial ownership of that real estate.

There are prescribed fees for the application to obtain a Licence to Acquire Land, which are relatively modest. There is also a fee payable on the issuance of a Licence to Acquire Land on purchase, which is significant, but only a nominal fee payable on acquisition by inheritance:

- Fees for dwelling houses purchased by non-Bermudians: 8% of the higher of the purchase price or market value (12.5% from 31 March, 2017).
- Fees for condominiums (flats within buildings containing a number of individually owned flats or houses) purchased by non-Bermudians: 6% (rising to 8% from 31 March 2017).
- Fees for permanent residents (those holding a Permanent Resident Certificate) purchasing property: 4% (rising to 6% from 31 March, 2017).

Foreign nationals owning Bermuda real estate under Licence must also pay Land Tax (*see Question 5*).

In addition to the licence fees, stamp duty is assessed on the conveyance of Bermuda real estate (*Stamp Duties Act 1976*):

- Up to BM\$100,000: 2%.
- Over BM\$100,000 to BM\$500,000: 3%.
- Over BM\$500,000 to BM\$1 million: 4%.
- Over BM\$1 million to BM\$1.5 million: 6%.
- Over BM\$1.5 million: 7%.

See also *Questions 7 and 8*.

Wealth taxes

There are no wealth taxes assessed in Bermuda.

Other

Customs duties are charged on the importation of goods to Bermuda under the Customs Tariff Act 1970. Those goods carried into Bermuda by air and sea passengers are charged to duty at the rate of 25% (subject to limited duty free allowances). There is no sales tax or VAT and there are no other significant taxes.

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

Bermuda trusts are commonly used as tax advantageous real estate holding structures. While it is technically possible for non-Bermudians to hold Bermuda real estate via Bermuda trusts, a Licence to Acquire Land must still be obtained for the trust to lawfully hold the Bermuda real estate (*see Question 11*). The grant of that Licence is discretionary and current policy appears not to favour applications made by trustees to acquire and hold Bermuda real estate for non-Bermudians and to favour applications made by non-Bermudians themselves.

Taxes on overseas real estate and other assets

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

Residents of Bermuda are not taxed in Bermuda on their non-Bermuda situated assets. Those assets may, however, be taxed in the jurisdiction(s) in which they are located or held. Trusts and underlying investment holding companies are often used by Bermudians to hold real estate and other overseas assets. This is to protect these assets from foreign inheritance tax.

International tax treaties

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

The US-Bermuda Tax Convention

In 1986, Bermuda entered the US-Bermuda Tax Convention Act 1986 which dealt with the taxation of certain insurance profits and provided for mutual assistance in tax matters, specifically the exchange of information relating to the prevention of fraud and tax evasion and the carrying out of fiscal laws (as amended by the US-Bermuda Tax Convention Act 2015). Subsequently, Bermuda and the US entered into a Competent Authorities Agreement, which extended the exchange of information beyond matters related strictly to fraud and tax evasion, so as to also cover civil (tax administration) matters. The requirement that information should be provided is limited by certain rights of confidentiality and subject to a procedure designed to ensure the US-Bermuda Tax Convention Act is not used as a means for a fishing expedition.

Double taxation agreements

Bermuda does not tax income or capital gains and therefore does not have a wide network of double taxation treaties. Bermuda does have treaties with Bahrain, Qatar, the Seychelles and the US, but they function mainly as exchange of information agreements.

Tax information exchange agreements

To date, Bermuda has negotiated over 40 tax information exchange agreements and continues to expand its network of agreements.

In furtherance of the international goal of co-operation in tax matters and the elimination of harmful tax practices, Bermuda signed a Model 2 Intergovernmental Agreement with the UK on 25 November 2013 and another with the US on 19 December 2013, to implement the US Foreign Account Tax Compliance Act (FATCA), providing for the reporting of all financial accounts held by UK and US persons respectively.

In addition, Bermuda is an early adopter of the OECD Common Reporting Standard (CRS) for automatic exchange of tax information. The aim of the CRS is to facilitate co-operation between parties to reduce the incidence of domestic tax evasion and avoidance. This is because CRS relates to a wide variety of taxes, including but not limited to:

- Income tax.
- Capital gains tax.
- Estate tax and sales tax by the exchange of information on request, automatically or spontaneously and through co-ordinated tax examination of any person by two or more countries.

WILLS AND ESTATE ADMINISTRATION

Governing law and formalities

15. Is it essential for an owner of assets in your jurisdiction to make a will in your jurisdiction? Does the will have to be governed by the laws of your jurisdiction?

It is neither a requirement nor essential for an owner of assets in Bermuda to make a will in Bermuda, but it is advisable. A will is an important and effective tool in carrying out estate planning. In the absence of a will, assets located in Bermuda will pass according to the provisions of the Succession Act 1974, which sets out various intestacy trusts for beneficiaries (see *Question 28*).

Wills executed outside of Bermuda may be effective in Bermuda if they meet the formality requirements of the Wills Act 1988 (see *Question 16*) and can be admitted to probate in Bermuda. Similarly a foreign grant of probate (for example, a grant issued out of the Probate Courts of the UK) can be resealed in Bermuda, conferring on the foreign executors (or administrators) the right to administer the deceased's Bermuda estate (see *Question 18*). This will often comprise an interest in Bermuda real estate, shares in Bermuda companies, or bank deposits with local banks.

16. What are the formalities for making a will in your jurisdiction? Do they vary depending on the nationality, residence and/or domicile of the testator?

The formalities for making a will are:

- The testator must be of sound disposing mind, that is, have the requisite testamentary capacity, which is the ability to:
 - identify those persons he should consider when disposing of his estate;
 - understand the nature of his act (when executing the will);
 - understand the extent of his estate.
- The testator must be aged 18 years or older.
- The will must be in writing.
- The testator must sign his will (or make his mark on the will if he is illiterate) in the presence of two independent witnesses.
- The independent witnesses must be 18 years or older and be of sound mind.

- The independent witnesses must see the testator sign and then sign the will themselves in the presence of the testator.

Persons named in a will as beneficiaries or the spouses of those persons should not witness the execution of that will. If this occurs, the will, in the absence of any other defect in execution, will remain valid but the gift to the beneficiary who witnessed the will, or whose spouse witnessed the will, will be held void.

Wills written entirely in the testator's own handwriting and signed by him at the end (a holographic will) will be valid under Bermuda law if proved by the oath of at least two persons acquainted with the testator's handwriting. However, this should be avoided, as most lay people would not appreciate the complexities of drafting a comprehensive and effective will and ensuring its proper execution.

Redirecting entitlements

17. What rules apply if beneficiaries redirect their entitlements?

Any beneficiary interested in any part of an estate is entitled to renounce, disclaim, assign or transfer the whole or any part of that interest. If an interest is renounced or disclaimed (as opposed to being assigned or transferred) the interest passes as if the person renouncing or disclaiming it had died before the testator. An interest that is assigned or transferred may attract stamp duty on the document of assignment or transfer (see *Questions 7 and 8*).

Validity of foreign wills and foreign grants of probate

18. To what extent are wills made in another jurisdiction recognised as valid/enforced in your jurisdiction? Does your jurisdiction recognise a foreign grant of probate (or its equivalent) or are further formalities required?

Validity of foreign wills

Under the Wills Act 1988, a will is to be treated as properly executed in Bermuda if it has been executed in accordance with the laws of the jurisdiction where either:

- It was executed.
- At the time of its execution or of the testator's death, the testator was either:
 - domiciled or had his habitual residence in that jurisdiction; or
 - was a national of that jurisdiction.

In addition, the Wills Act provides that the will is validly executed:

- If executed on board a vessel or aircraft, the will conforms to the laws of the territory of registration or close connection of that vessel or aircraft.
- To the extent that it disposes of immovable property, its execution complies with the laws where the immovable property is situated.
- So far as a will exercises a power of appointment, its execution conforms to the law governing the essential validity of the power of appointment.

Validity of foreign grants of probate

Foreign grants of probate, letters of administration, or letters testamentary issued out of the relevant probate courts of the following countries can be resealed in the Supreme Court of Bermuda:

- The UK.
- Any British possession, colony or dependency.

- A Commonwealth member nation.
- Any state of the US (including the District of Columbia).

Death of foreign nationals

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

Generally, there are no relevant practical estate administration issues if foreign nationals die in Bermuda. However, to the extent that a foreign national dies owning an interest in Bermuda real estate the disposal of that real estate under a will or by intestacy must be conducted according to certain time frames set out in the Bermuda Immigration and Protection Act 1956. For example, a non-Bermudian who acquires an interest in Bermuda land by inheritance must dispose of that interest or obtain a licence to retain it within three years of the date on which he acquired the interest. Prior to the passage of the Bermuda Immigration and Protection Amendment Act 2015, the period within which that interest had to be disposed of or a licence obtained was capable of a further extension by the Minister responsible for immigration for a further three years only. As a consequence of the 2015 Amendment Act, the Minister can extend the deferral period for further additional periods not longer than the original deferral period but only if he is satisfied that there are exceptional circumstances. This is welcome relief as the penalties for non-compliance with the legislative requirements are severe. There is now some scope for ministerial discretion in extraordinary circumstances, where previously there was none.

Administering the estate

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

Responsibility for administering

Responsibility for administering an estate lies with the estate representatives. Where executors are named in a will and any one or more of them obtains a Grant of Probate the executors named in the Grant will be the estate representatives. The rules contained in the Non-Contentious Probate Rules 1974 will determine, in order of priority, who may apply for a Grant of Letters of Administration (with or without will annexed) if:

- No executors are named.
- The named executors fail or refuse to act.
- No valid will is in existence.

Vesting

The estate of a deceased in Bermuda vests automatically in his executors (if any) and they are able to pass good title to certain estate assets but not others (for example, not real estate) until their authority is confirmed by the issue of a Grant of Probate.

For intestate estates, the estate vests in the Registrar of the Supreme Court of Bermuda and on the issuance of a Grant of Letters of Administration it automatically transfers to and vests in the estate representatives.

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

Establishing title and gathering in assets

The procedure for establishing title and gathering in assets involves a thorough examination of the deceased's property and

affairs, often in conjunction with the deceased's family and advisors.

A Grant of Probate or Letters of Administration may not be required in all cases to pass good title to estate assets to beneficiaries (see *Question 20*). In that case, however, those with control or possession of estate assets may not be willing to release those assets until proof of an estate representative's position (and therefore title) is produced (that proof is almost always a Grant of Probate or Letters of Administration).

Grants can also be required where non-Bermuda property is involved although no estate stamp duty may be due.

The procedure and documents required to obtain a Grant of Probate or Letters of Administration are set out in the Non-Contentious Probate Rules 1974.

Procedure for paying taxes

The assets of a deceased that are liable to attract stamp duty are disclosed in an Affidavit of Value sworn by the estate representatives and lodged with the Supreme Court of Bermuda, together with the estate representatives' application for a Grant of Probate or Letters of Administration.

If the Registrar of the Supreme Court agrees with the disclosure and calculation of the relevant stamp duty, he issues a Stamp Duty Certificate to the estate representatives together with the Grant. The estate representatives generally have 90 days to pay the stamp duty in full.

Once paid in full the:

- Tax Commissioner's Office endorses the Stamp Duty Certificate to note payment in full.
- Stamp Duty Certificate is then lodged with the Registrar of the Supreme Court as proof of payment of the requisite stamp duty.
- Registrar issues a separate acknowledgement of payment in full of the stamp duty to the estate representatives.

Distributing the estate

The estate representatives are not obliged to distribute the estate until six months after the later of the grant of representation or one year after the deceased's death. If an application is made for a Grant of Probate or Letters of Administration after more than a year has elapsed from the death of the testator, however, the Registrar of the Supreme Court will require an explanation from those applying for the Grant as to why the application is being made more than a year after the testator's death.

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

This varies greatly depending on the other jurisdictions in question. The most significant time limits affecting the administration of an estate in Bermuda are those relating to a non-Bermudian holding an interest in Bermuda real estate at his death (see *Question 19*).

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

The beneficiaries of a deceased's estate can challenge the interpretation of a clause or clauses in a will where:

- There is ambiguity.
- The will was not duly executed.
- The disposing party lacked a sound mind.

- There was no knowledge and approval on the part of the testator.

Claims of fraud and undue influence can also be raised. Beneficiaries can also challenge the estate representatives on the basis of *devastavit* or breach of trust. Such challenges are made via commencement of proceedings in the Supreme Court.

The following individuals can also challenge the dispositive provisions of a will (or the intestacy trusts) on the basis that the will or intestacy trusts do not provide reasonable financial provision for the beneficiary bringing the challenge (*Succession Act 1974*):

- A spouse.
- A former spouse who has not remarried.
- Children.
- Grandchildren, provided they were being maintained by the deceased.

An application under the Succession Act for reasonable financial provision must be commenced in the Supreme Court within six months from when a grant of representation is first taken out. An application can be commenced out of time but only with the permission of the Supreme Court.

Challenging a will may be subject to forfeiture of a gift made under the will if an appropriately drafted and enforceable forfeiture provision is contained in the will.

In 2014 a Bermuda Supreme Court decision upheld the long-standing legal rule against the *in terrorem* use of a forfeiture condition, holding the forfeiture provision included in the will under review by the Bermuda court invalid in the absence of a gift over provision.

SUCCESSION REGIMES

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

There is no forced heirship regime in Bermuda. The Succession Act 1974 may, however, determine entitlement to a deceased's estate that is left undisposed of through whole or partial intestacy (see *Question 28*).

Forced heirship regimes

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

Avoiding the regime

There is no forced heirship regime in Bermuda (see *Question 24*).

Assets received by beneficiaries in other jurisdictions

Not applicable.

Mandatory or variable

Not applicable.

Real estate or other assets owned by foreign nationals

26. Are real estate or other assets owned by a foreign national subject to your succession laws or the laws of the foreign national's original country?

Bermuda succession law applies to assets located in Bermuda (see *Question 15*).

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

There are no reported cases in Bermuda on the application of the doctrine of *renvoi* in relation to succession to immovable property. However, the courts of Bermuda can choose to accept jurisdiction over immovable property located in a foreign country where the courts of such country refer the matter back. Essentially, the doctrine of *renvoi* is a discretionary tool.

INTESTACY

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

The Succession Act 1974 determines the order of succession to the real and personal estate of a deceased on a whole or partial intestacy. If the intestate leaves only a spouse, then the spouse takes the residuary estate absolutely. If the deceased leaves only issue (children or other lineal descendants such as grandchildren and great-grandchildren), the issue will take *per stirpes* (that is each branch of a family will receive a specified share of the estate). If the intestate leaves a spouse and issue, the spouse will take the personal chattels absolutely, and, additionally, a sum equal to 50% of the value of the residuary estate or BM\$100,000, whichever is greater, and the balance of the residuary estate will be held for the deceased's issue *per stirpes*.

Where the deceased leaves a spouse and any one or more of a parent, brother or sister of the whole blood, or issue of a brother or sister of the whole blood, but no issue, the surviving spouse will take the personal chattels and a sum equal to 66% of the value of the residuary estate or BM\$150,000, whichever is the greater and the parent(s) or siblings, or siblings children, as the case may be will share the balance. In the absence of a spouse or issue, the order of priority is:

- Parents.
- Siblings (whole blood or their issue, then half blood or their issue).
- Grandparents.
- Uncles and aunts (whole blood or their issue, then half blood or their issue).
- The crown.

The surviving spouse of an intestate can also exercise certain rights relating to the matrimonial home.

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

Certain individuals can challenge the dispositive provisions under the intestacy rules on the grounds that they do not provide reasonable financial provision for the beneficiary bringing the challenge (see *Question 23*).

TRUSTS

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

Type of trust and taxation

The general principles of Bermuda trust law are derived from English common law and equity and have developed, to a large

degree, alongside English trust law. Part of Bermuda's trust law is now codified by statute and where Bermuda trust law has diverged from English trust law it has been almost exclusively as a result of this legislation, such as the Trustee Act 1975 and in particular, the Trusts (Special Provisions) Act 1989, which provides for the validity and establishment of non-charitable purpose trusts, a concept that (barring some exceptions) is not recognised under English trust law.

The types of trusts established under Bermuda law vary greatly, but the most common forms are:

- Discretionary.
- Charitable.
- Accumulation and maintenance.
- Insurance.
- Employees benefit.
- Pension.
- Purpose (for non-charitable purposes); and
- Unit trusts.

Bermuda does not impose any taxes on income, profits, dividends, gifts or capital gains earned, received or derived by trusts.

As with estates, there are certain documents relating to trusts that may be assessed to fixed amounts of stamp duty (*see Questions 7 and 8*). Exemptions to the assessment of stamp duty have been carved out for trust documents relating to the transfer or disposition of assets that are not Bermuda property (as defined in the Stamp Duties Act 1976). This ensures that Bermuda-based trusts for the benefit of non-Bermudians (who would normally not hold Bermuda property in any event) maintain a competitive advantage (in terms of costs of administration and taxation of trust funds) over trusts in other jurisdictions.

Residence of trusts

The residence of a trust is generally determined by its governing law as chosen by the settlor (*section 5, Trusts (Special Provisions) Act 1989*).

Where the governing law of a trust is stated to be that of Bermuda, the courts of Bermuda will have jurisdiction in relation to that trust, irrespective of whether that trust has a connection to Bermuda as a result of the:

- Trusteeship.
- Composition of its trust fund.
- Nationality or residence of the settlor, or his connection with Bermuda.

If the written terms of the trust are silent on the governing law, the trust is governed by the written terms of the trust (*section 6, Trusts (Special Provisions) Act 1989*). In determining that connection, the following factors must be taken into account:

- The place of administration of the trust.
- The location (*situs*) of the trust property.
- The place of residence or business of the trustee.
- The objects of the trust and the places where they are to be fulfilled.

The Supreme Court of Bermuda has jurisdiction over a trust where any of the following circumstances exist:

- A trustee is resident in Bermuda.
- Trust property is situated in Bermuda.
- The administration of the trust is carried on in Bermuda.

- The court thinks it appropriate to exercise jurisdiction over that trust.

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

Bermuda recognises trusts that are governed by another jurisdiction's laws.

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

There are no tax consequences to the trustees of a foreign trust becoming resident in or leaving Bermuda. There may be some nominal fixed stamp duties to pay on documents relating to the retirement of foreign trustees of trusts in favour of either Bermudian or Bermuda resident trustees or the appointment of foreign trustees in place of Bermudian or Bermuda resident trustees.

33. If your jurisdiction has its own trust law:

- Does the law provide specifically for the creation of non-charitable purpose trusts?
- Does the law restrict the perpetuity period within which gifts in trusts must vest, or the period during which income may be accumulated?
- Can the trust document restrict the beneficiaries' rights to information about the trust?

Purpose trusts

Bermuda was a leader in the enactment of legislation to permit trusts for non-exclusively charitable purposes (purpose trusts) and the development and promulgation of the use of Purpose Trusts, particularly in the commercial context. The legislation providing for the establishment of Purpose Trusts is the Trusts (Special Provisions) Act 1989. Purpose Trusts can be found in use in many commercial transactions and arrangements, including:

- Aircraft and other asset financing.
- Asset or liability ring-fencing.
- Private trust company structures.

Perpetuities and accumulations

Bermuda abolished the rules against perpetuities and accumulations for trusts formed after 1 August 2009, except to the extent that those rules apply to interests in land in Bermuda (*Perpetuities and Accumulations Act 2009*). The rule against perpetuities and accumulations continues to apply to trusts formed before 1 August 2009, although it is possible to bring an application to the Supreme Court of Bermuda to extend or remove the applicable trust period.

Beneficiaries' rights to information

The Supreme Court of Bermuda has inherent jurisdiction to supervise the administration of a trust. Alongside the beneficiary's right to hold a trustee to account for the management and investment of the trust fund, this might be thought to make it quite difficult to restrict a beneficiary's right to request and obtain information on the administration, management or investment of the trust fund by express provision in the trust deed.

In its 2014 decision in the case of *In The Matter of an Application for Information about a Trust [2013] CA (Bda) Civ*, the Court of Appeal supported the first instance decision of the Chief Justice of Bermuda that a carefully worded but restrictive trust information disclosure clause (in this case, requiring the consent of the protector to any disclosure of information), was valid as it did not seek to oust the jurisdiction of the court or generally obstruct the beneficiaries' right to information. However, on the facts of the case (which included the fact that the protector was also the principal beneficiary of the trust and owed no fiduciary duties to the beneficiaries according to the terms of the trust deed) there was a genuine concern that the information control mechanism was not being operated in a manner consistent with the presumed intentions of the settlor, and in the interests of the beneficiaries, which justified the court's interference. The Court of Appeal granted the protector leave to appeal the decision to the Judicial Committee of the Privy Council in London.

34. Does the law in your jurisdiction recognise claims against trust assets by the spouse/civil partner of a settlor or beneficiary on the dissolution of the marriage/partnership?

A trust validly created under the laws of Bermuda can only be set aside in accordance with the laws of Bermuda, irrespective of the laws or judgments of other jurisdictions, including those related to heirship rights and personal relationships (including divorce) (section 11, *Trusts (Special Provisions) Act 1989*). However, the increasing aim of the courts in divorce cases is to achieve "fairness and equality", and there is a greater likelihood that full disclosure of trust assets and the pattern of distributions from trusts (even in the case of discretionary trusts) will be required. Therefore in appropriate circumstances trust assets are considered as a "resource" to a divorcing spouse.

35. To what extent does the law of your jurisdiction allow trusts to be used to shelter assets from the creditors of a settlor or beneficiary?

The following general rules apply:

- The assets of a trust are not available to satisfy the claims of a creditor of the settlor or any beneficiary of the trust.
- Any assets transferred to a trust are not available to satisfy the claims of a creditor of the person who made the transfer of assets to the trust.

However, an "eligible creditor" can bring proceedings to set aside the transfer within six years of any transfer made with the "requisite intention" (generally meaning an intention to put those assets beyond the reach of creditors) (Part IV A, *Conveyancing Act 1983*; for definitions of eligible creditor and requisite intention see Part IV A). It is necessary to prove, on the balance of probabilities, that when a transferor transferred assets to a trust, he did so with the requisite intention. If the creditor bringing the action was not, at the time of the transfer, a person to whom the transferor owed any obligation, the court must be satisfied that the creditor was reasonably foreseeable by the transferor as a person to whom the transferor may owe an obligation in the future.

CHARITIES

36. Are charities recognised in your jurisdiction?

Charities are legally recognised under Bermuda law and can take varying forms such as charitable trusts and companies limited by guarantee. The law relating to charities in Bermuda was overhauled by the Charities Act 2014, in part to ensure that

charities are not being used for money-laundering purposes or the financing of terrorist activities. Now, every organisation wishing to operate as a charity must be registered unless they are "exempted". To be exempted, a charity must:

- Be privately funded.
- Not solicit funds from the Bermuda public.
- Not receive funding from the Bermuda Government or Bermuda public sources.

In addition, to be exempted, a charitable trust must:

- Be licensed under the Trusts (Regulation of Trust Business) Act 2001.
- Be exempted under either the Trusts (regulation of Trust Business) Exemption Order 2002 or under section 9 of the Trusts (Regulation of Trust Business) Act 2001.
- Have a registered office with, and be subject to, compliance by an institution that is, itself, licensed by a supervisory authority in Bermuda.

Charities that are exempted from registration must still meet the requirements to be a charity as provided in the Charities Act 2014. To be a charity in Bermuda, an organisation must:

- Be subject to the jurisdiction of the Bermuda courts (in other words, the charity cannot be a charity in Bermuda if it is subject to the jurisdiction of another country);
- Have only purposes that fall within the description of charitable purposes as provided in the Act (for example, relief of poverty, advancement of education, religion, health, citizenship, the arts, sport).
- Be for the public benefit (there must be an actual benefit to the public, so that private or personal benefits must be those necessary or merely incidental to achieving the charitable purposes).

Registered charities have an annual reporting responsibility, which includes statements of account as well as a written report on how their charitable purposes have been carried out for the public benefit throughout the previous year.

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

Individuals can select among a number of structures to establish a charity, however, the two most commonly used structures are charitable trusts and companies limited by guarantee.

The Registrar General maintains a central public register of registered charities which is open to public inspection. Currently, there are over 400 registered charities entered in the Register in Bermuda. Private charitable organisations established in Bermuda are not required to be registered and consequently are not subject to the same disclosure and filing requirements as registered charities. However, the Charities Act 2014 has increased oversight of private charities (see *Question 36*).

Anyone wishing to register a charitable organisation in Bermuda must complete the requisite application form and supply supporting documentation. The form discloses particulars of the organisation including its main charitable purposes, its proposed fund-raising activities and how it proposes to apply the funds raised. The form must demonstrate how the public benefit requirement will be met. Once completed, the form is submitted to the Office of the Registrar General for Bermuda and is considered by the Charity Commissioners for approval. If approved, registration can be granted for one, three, or five year terms. An

indefinite status will only be given when requested and in special circumstances.

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

In addition to the public benefit that charities provide there are certain benefits for individuals in establishing charitable organisations in Bermuda. In many cases any Bermuda property transferred to a registered charity (voluntarily or for value) will not attract any stamp duty on the transfer instrument. Private charitable organisations can also avail of these exemptions provided that they first obtain a ruling from the Ministry of Finance confirming that they are charitable. It is also possible for foreign charitable organisations to obtain these rulings from the Minister of Finance for gifts of property situated in Bermuda by will to foreign charitable organisations.

Bermuda charitable organisations can also avail of favourable status in other jurisdictions (such as the US) by partnering with charitable organisations in other jurisdictions or establishing related charitable entities in those jurisdictions (for example 501(c)(3) tax exempt status in the US).

It is likely that the increased regulation resulting from the Charities Act 2014 will make the establishment of Bermuda charities less appealing in some instances.

OWNERSHIP AND FAMILIAL RELATIONSHIPS

Co-ownership

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

Overview of co-ownership

Generally, property in Bermuda can be held in varying forms of co-ownership, such as:

- Joint tenancy.
- Tenancy-in-common.
- Life interests with attendant interests in remainder.

Each form of co-ownership brings different implications for estate planning and ultimately determines the likelihood of stamp duty being assessed on the value of that property on the issuance of a Grant of Probate or Letters of Administration. Generally, co-ownership by way of joint tenancy is the most effective form of co-ownership in terms of avoiding estate stamp duty.

Joint tenancy

Joint tenancy is effective in avoiding estate stamp duty, primarily because when one joint tenant owner of a property dies leaving a surviving joint owner or owners, the title (both legal and beneficial) of the deceased's joint interest passes automatically to the survivor(s) without the need to obtain a Grant of Probate or Letters of Administration. If, however, the deceased joint tenant owner leaves other assets within his estate requiring a Grant of Probate or Letters of Administration in order to pass title to the beneficiaries, the extent of any property owned in joint tenancy with others must be disclosed in the application for the grant. The value of the property for stamp duty purposes is taken to be the market value of the property at the date of the deceased joint owner's death divided by the number of joint owners of the property at that time. That value falls to be included as part of the deceased's dutiable estate (provided that it is Bermuda property) even though it passes automatically to the surviving joint owners and does not devolve in accordance with the deceased's will or the intestacy trusts.

Familial relationships

40. What matrimonial regimes in trust or succession law exist in your jurisdiction? Are the rights of cohabitees/civil partners in real estate or other assets protected by law?

Bermuda law does not recognise the concept of a common law or same sex marriage and does not confer any rights on such persons or on cohabitees. The rights of any such persons as they relate to real estate and other assets may derive from areas of the law not necessarily relating to succession or trusts (in the usual sense of *inter vivos* trusts), such as rights founded in contract or equity (constructive trust and proprietary estoppel).

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

No. See *Question 40*.

42. How are the following terms defined in law:

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

Married

There is no main definition of the term "married". It is referred to in the following legislation, in a variety of different contexts:

- Marriage Act 1944.
- Matrimonial Causes Act 1974.
- Adoption of Children Act 1963.
- Wills Act 1988.

Divorced

See above, *Married*.

Adopted

There is no formal legal definition of the term "adopted", although section 14(1) of the Adoption of Children Act 1963 effectively defines an adopted child as a child who was not born to the adopter but stands in relation to the adopter "exclusively in the position of a child born to the adopter".

Legitimate

Bermuda law no longer recognises the concept of an illegitimate child and so all natural born children, whether born in or out of wedlock, are legitimate children (arguably the concept of legitimate children is also redundant) (*Children Amendment Act 2002*).

Civil partnership

See *Question 40*.

Minority

43. What rules apply during the period when an heir is a minor? Can a minor own assets and who can deal with those assets on the minor's behalf?

The age of majority in Bermuda is 18 years (*Minors Act 1950*).

A minor is legally incapable of holding title to real estate in Bermuda. Property may be held in trust for a minor and applied for his benefit and/or may be paid to his parent or guardian or to the minor directly if he has reached the age of 16 years. The receipt of the parent or guardian of the minor is a sufficient discharge to the trustee, who need not see to the further application of the relevant property.

CAPACITY AND POWER OF ATTORNEY

44. What procedures apply when a person loses capacity? Does your jurisdiction recognise powers of attorney (or their equivalent) made under the law of other jurisdictions?

Powers of attorney

Bermuda law recognises powers of attorney. Powers of attorney can be limited in scope (for example, signing a conveyance on behalf of a party who will be abroad and unable to sign it at the requisite time) or extensive in scope, authorising the attorney to do almost anything and everything on behalf of the donor of the power of attorney.

The donor of a power of attorney must have requisite capacity to grant a valid power of attorney.

A regular power of attorney ceases to be valid on a subsequent loss of "legal capacity" (as defined in the Mental Health Act 1986) of the donor of the power of attorney. If the power of attorney is granted to endure throughout the subsequent loss of legal capacity by the donor (enduring power of attorney) it will not be invalidated by the onset of such incapacity (*Powers of Attorney Act 1944*).

Receivership

In the absence of an enduring power of attorney an interested person can apply to the Supreme Court of Bermuda for an order

under the Mental Health Act 1986 to be made the receiver (Receiver) for a person who has lost legal capacity (Patient) and to manage the Patient's property and affairs. A person appointed Receiver must file annual accounts with the court setting out the income and expenses of the Patient and the extent of the Patient's remaining property. Significant actions proposed to be taken in relation to the Patient's property or affairs (for example, the sale of real estate) must first be approved by the Supreme Court of Bermuda.

While receivership is certainly an available option and one carrying a higher level of accountability, the process to obtain receivership can be cumbersome and expensive. The granting of an enduring power of attorney is generally preferable, so long as a suitable party is available to act as attorney.

PROPOSALS FOR REFORM

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

At present there are significant efforts being made in several quarters and in collaboration (through the Society of Trust and Exchange Practitioners (STEP) Bermuda, the Bermuda Business Development Corporation and the Bermuda Association of Licensed Trustees) to undertake a comprehensive review of Bermuda's trust laws with a view to enhancing and improving those areas where it is felt necessary. Bermuda's approach to legislative change in this area has been quite measured and considered.

A Law Reform Commission has also been established and has made recommendations to the Ministry of Health, Seniors and Environment for the amendment of legislation to better protect seniors from financial abuse in particular the:

- Powers of Attorney Act 1944.
- Senior Abuse Register Act 2008.
- Domestic Violence (Protection Orders) Act 1977.

The proposed amendments are the result of a recognised need to offer better protection to Bermuda's ageing population.

ONLINE RESOURCES

Bermuda Laws Online (BLO)

W www.bermulalaws.bm/default.aspx

Description. BLO is a database of Bermuda's statutes and statutory instruments. It contains both consolidated laws and annual laws from 1993. It is maintained by the government and kept up-to-date.

Bermuda Judiciary

W www.gov.bm/portal/server.pt?open=512&objID=204&mode=2&in_hi_userid=2&cached=true

Description. Official page of the Bermuda Judiciary, which is maintained by the government and kept relatively up-to-date. The website provides a general introduction to Bermuda's court system, as well as more detailed information for the public and lawyers.

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