



Trust Essentials: July 2021

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From staying on top of regulatory developments, to managing interpersonal dynamics among warring beneficiaries, a trustee's role is only becoming more and more complex.

In their lead article, Guernsey Private Wealth partners Matt Guthrie and Catherine Moore take stock of the past year and the changing priorities of private clients and their advisors against this backdrop of complexity and uncertainty.

Other recent developments include amendments to Jersey's Proceeds of Crime Law with relation to investment in cannabis products.

To discuss any of these topics further, please reach out to your regular Ogier contact or any member of the team.

Enjoy this edition.

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Let's talk: developments in the private client world

The past year has been a difficult and unsettling one for many. Some have lost or been separated from loved ones, while others have had a moment to pause and reflect on what matters most to them and what the future may bring. This is no less true for the international clients who work with the fiduciary sector in Guernsey.

In this article, partners **Matt Guthrie** and **Catherine Moore** look at the impact the COVID-19 pandemic has had on the private wealth industry.

Battle of the beneficiaries: how to avoid trustee no-man's land

Much as every trustee yearns for harmony and familial good will, sadly the modern reality of trusteeship can be very different. With the ever-increasing rise in high and ultra-high net worth structures, often in a dynastic setting, the potential for disharmony, or downright hostility, among beneficiaries is on the rise.

In this article, managing associate **James Angus** shares some practical steps which can be taken to help trustees sail a straight course through choppy waters.

Cannabis: amendments to the Proceeds of Crime Law in Jersey

On 30 June 2021, the Government of Jersey debated, and passed, certain amendments to the Proceeds of Crime (Jersey) Law 1999 to amend the definition of criminal conduct. The new regulations, which came into force on 7 July 2021, facilitate investment and structuring in the cannabis sector but with strict rules.

In this article, senior associate **Katie Baxter** discusses the increased interest in cannabis investments, the new regulations, and the two stage due diligence test that financial services businesses will need to conduct.

Structuring from the foundations to the stars: Cayman foundation companies and STAR trusts

Cayman boasts a variety of innovative and flexible vehicles and structures beyond the basic trust instrument, which can meet the structuring requirements of a range of entities, from charities to commercial ventures. Foundations and STAR trusts are among the structuring options available.

In this article, partner **Anthony Partridge** looks at these two vehicles and discusses the distinct properties which may make one more suitable than the other depending on circumstances and requirements.

To exclude, or not to exclude, that is the question

Article 10(2) of the Trusts (Jersey) Law 1984, as amended states that the "The terms of a trust

may provide for the addition of a person as a beneficiary or the exclusion of a beneficiary from benefit" and most trust instruments will indeed contain such provisions in one form or another. Alongside the power to add beneficiaries, the power to exclude is a vital weapon in the armoury of trustees.

In this article, managing associate **Richard Laignel** shares his insights on the power to exclude and the key considerations for trustees.

Constructive trusts and immovable property - English High Court grapples with a vexed question of Jersey law

In the recent decision of *The Serious Fraud Office & Anor v Litigation Capital Limited & ors* [2021] EWHC 1272 (Comm), the English High Court has ruled that it is not possible to have a constructive trust over Jersey immovable property. Whilst this question of constructive trusts over Jersey immovable property has been previously debated before the Jersey Courts, it is not an issue that has otherwise previously been resolved and so there is no direct Jersey authority on the point.

In this article, partner **Oliver Passmore**, counsel **Rebecca McNulty**, and associate **Liana Pallot** look at the English High Court's decision in more detail and consider how it may influence the Royal Court when the same issue arises in a future case.

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Meet the Author



Brian Lacy

Partner

British Virgin Islands

Jersey

E: brian.lacy@ogier.com

T: [+44 1534 514493](tel:+441534514493)

Key Contacts



Rachael Reynolds KC

Global Senior Partner

Cayman Islands

E: rachael.reynolds@ogier.com

T: [+1 345 815 1865](tel:+13458151865)



Jennifer Fox

Partner

Cayman Islands

E: jennifer.fox@ogier.com

T: +1 345 815 1879



Anthony Partridge

Partner

Cayman Islands

E: anthony.partridge@ogier.com

T: +1 345 815 1810



Catherine Moore

Partner

Guernsey

E: catherine.moore@ogier.com

T: +44 1481 752364



Matt Guthrie

Partner

Guernsey

E: matt.guthrie@ogier.com

T: [+44 1481 752342](tel:+441481752342)



Jacqueline Loh 呂佩儀

Head of Private Wealth 私人財富總監

Hong Kong

E: jacqueline.loh@ogier.com

T: [+852 3656 6167](tel:+85236566167)



James Campbell

Partner

Jersey

E: james.campbell@ogier.com

T: +44 1534 514230



Josephine Howe

Partner

Jersey

E: josephine.howe@ogier.com

T: +44 1534 514201



Oliver Passmore

Partner

Jersey

E: oliver.passmore@ogier.com

T: +44 1534 514247



Nick Williams

Partner

Jersey

E: nick.williams@ogier.com

T: [+44 1534 514318](tel:+441534514318)



Rebecca McNulty

Partner

Jersey

E: rebecca.mcnulty@ogier.com

T: [+44 1534 514495](tel:+441534514495)



James Angus

Partner

Jersey

E: james.angus@ogier.com

T: [+44 1534 514316](tel:+441534514316)



Richard Laignel

Managing Associate

Jersey

E: richard.laignel@ogier.com

T: [+44 1534 514151](tel:+441534514151)



Katie Baxter

Managing Associate

Jersey

E: katie.baxter@ogier.com

T: [+44 1534 514173](tel:+441534514173)

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