

UPDATE

New lasting powers of attorney – international clients

Update prepared by Gilly Kennedy-Smith and Iona Mitchell (Guernsey)

The Capacity (Lasting Powers of Attorney) (Bailiwick of Guernsey) Ordinance, 2022 (the **Ordinance**) is expected to come into force on 1 April 2022.

This Update focuses on the implications of the new provisions for international clients, who are not resident in Guernsey, and their advisors. We have issued a separate Update considering for position for individuals resident in Guernsey [here](#).

Wealth structures supporting international clients often include liquid assets such as bank accounts to allow easy and quick access to cash when it is required. It is important for these accounts to be readily available, as they provide a source of funds to pay for expenses and other outlays when many of the assets in the structure are tied up in illiquid assets such as real estate. For similar reasons, it can be advisable to have a Guernsey Will limited to Guernsey assets to avoid paying probate fees in respect of the worldwide estate and release Guernsey funds more quickly, to assist the family and administration in other locations.

If the account holder loses capacity, the bank usually needs legal authority to release any funds and this is where a *lasting* power of attorney (**LPA**) becomes relevant. Under the current regime, any Guernsey power of attorney granted by the account holder (the **grantor**) during their lifetime cease to be valid after they lose capacity and instead a Guardianship order is required from the Royal Court in Guernsey, giving the persons appointed by the Court (the **guardians**) the power to deal with the grantor's affairs.

The Capacity (Lasting Powers of Attorney) (Bailiwick of Guernsey) Ordinance, 2022 (the **Ordinance**) will allow a grantor to create an LPA which can continue to have effect after the grantor loses mental capacity. Where there is an LPA in place, the more costly and time-consuming process of obtaining a Guardianship order in Guernsey will not be required.

The LPA will not be valid until it is registered by the grantor at the Greffe. The grantor must have capacity when it is executed and registered, and must also be physically present at the appointment in Guernsey when it is registered. This final hurdle is aimed at giving the opportunity for registration staff to check that there is no impropriety such as undue influence, but it means that a Guernsey LPA may not be a practical solution for many clients residing outside of Guernsey, unless they can plan it around a visit to see their local corporate service provider.

It will still be possible to register an *enduring or lasting* power of attorney granted in another jurisdiction (most commonly a registered United Kingdom LPA) in the Royal Court in Guernsey, but this will happen after a loss of capacity, which will result in a slight delay in accessing funds. This may continue to be the most practical solution for international clients who are unable to plan a visit to the island.

The Ordinance bringing in the changes discussed in this Update is due to be debated at the States meeting on 30 March and if it is approved it will come into force on 1 April.

More information is on the Royal Court website [here](#).

Contacts



Gilly Kennedy-Smith
Solicitor (England & Wales) non-practising
Mourant Ozannes (Guernsey) LLP
+44 1481 739 397
gilly.kennedy-smith@mourant.com



Alexander Hawkins
Associate | Solicitor (Queensland) non-practising
Mourant Ozannes (Guernsey) LLP
+44 1481 739 324
alexander.hawkins@mourant.com



Iona Mitchell
Knowledge Lawyer | Advocate
Mourant Ozannes (Guernsey) LLP
+44 1481 731 406
iona.mitchell@mourant.com

This update is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this update, please get in touch with one of your usual contacts. You can find out more about us, and access our legal and regulatory notices at [mourant.com](https://www.mourant.com). © 2022 MOURANT OZANNES ALL RIGHTS RESERVED