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**TERMS OF BUSINESS**

May 2018

## Bedell Cristin Executors Limited - Jersey

### Introduction

These terms of business ("**Terms of Business**") apply to any appointment of Bedell Cristin Executors Limited to act as:

- executor of a will;
  - executor dative of a will;
  - administrator of an intestacy;
  - attorney executor, executor dative or administrator;
- together, our "Services".

### Objectives

Our aim is to provide you with a high quality, effective and cost efficient service when obtaining grants of probate or letters of administration and in dealing with the ongoing administration of estates.

Bedell Cristin Executors Limited is a separate company wholly owned by the partners of Bedell Cristin, a leading Jersey law firm. Partners and other lawyers at Bedell Cristin are available to provide legal advice on any issues that arise in carrying out the work of Bedell Cristin Executors Limited. In particular, the private client and local business group of lawyers at Bedell Cristin is available to provide legal advice in connection with all estate planning matters, including the preparation of wills and trusts.

### Fee earners responsible for your work

In the interest of providing a cost effective service, unless agreed otherwise at the outset, Bedell Cristin Executors Limited and Bedell Cristin reserve the right to delegate work to staff members who appear to the partner responsible to be appropriate, by qualification or experience, to handle the work concerned.

In all cases where Bedell Cristin Executors Limited is appointed as executor, executor dative, administrator, or attorney executor, in relation to the estate in Jersey of a deceased person, a client relationship partner at Bedell Cristin will be ultimately responsible for the conduct of the matter. Any questions or comments connected with the administration of the estate should be directed to the administrator at Bedell Cristin Executors Limited dealing with the matter in the first instance and may then be referred on to the client relationship partner for the particular estate.

### Services

We shall provide Services on the following terms:

- (a) you should, unless otherwise agreed, provide initial instructions in writing. It is vital that you provide us with all relevant information (including electronically held information) and documents and indicate any gaps and keep us informed of any material changes in your instructions, knowledge or circumstances or any matter having a bearing on the matter;

- (b) we shall not do anything or be required to do anything which in our opinion may conflict with the laws and regulations of Jersey or the terms of any permits, consents, licences or applicable codes of practice made thereunder by any competent authority in Jersey nor shall we be required to do anything which may give rise to any risk of criminal or civil liability or prosecution in any part of the world;
- (c) save as expressly agreed in advance in separate and specific instructions, we are not and do not hold ourselves out as being experts in or have knowledge of the laws or regulations of any jurisdiction other than Jersey;
- (d) we shall keep confidential all information and documents concerning the business in respect of which we are requested to provide Services and any transaction or matter involving you unless:
  - (i) we are required to disclose information under the laws and regulations of any of the Relevant Jurisdictions, or by order of the courts of any of these jurisdictions or any other courts of competent jurisdiction or the failure to make such disclosure would, in our opinion, be prejudicial to us, our staff or any agents; or
  - (ii) we are authorised to disclose any information by you; or
  - (iii) where we are working with other advisers on your behalf, unless you expressly otherwise instruct us, we will disclose such information to them in furtherance of the provision of Legal Services as in our view is appropriate; or
  - (iv) the information concerned is already in the public domain; or
  - (v) it is necessary or desirable to disclose the same to any partnership within Bedell Cristin, or any of its subsidiary or associated companies; or
  - (vi) it is necessary or desirable to disclose the same to defend any claim against us; or
  - (vii) it is necessary or desirable to disclose such information to any auditor or legal adviser of ours;accordingly, you waive your rights to privilege in respect of any disclosure of information as set out above;
- (e) we may rely on any instructions or requests made or notices given or information supplied, whether orally or in writing, by any person whom we know to be or reasonably believe to be authorised by you to communicate with us for such purposes. We may receive information from you or from other sources in the course of delivering the Services;
- (f) in the event of a seriously disruptive event occurring at the offices of Bedell Cristin Executors Limited, we shall endeavour to restore our Services as soon as practicable. We cannot accept responsibility for any delay caused by such disruption or for any other consequences beyond our reasonable control.

#### **Professional undertakings**

If you or your agent instruct us to give a professional undertaking we reserve the right to refuse to do so. Where we give any such professional undertaking we will usually require you to support this in writing and to confirm agreement to the terms. In any event we will be entitled to full security to meet the obligations incurred on your behalf and all costs associated with the undertaking on a full indemnity basis. An undertaking once given (and subject to its terms) will not necessarily be able to be withdrawn and may be for an unlimited time.

In relation to any such undertaking given on your behalf, you agree fully and immediately to indemnify us in respect of all claims, time costs, liabilities and disbursements incurred by us in complying with it.

#### **Powers of attorney**

Where you provide us with a power of attorney we may act on that power of attorney in accordance with its terms consistent with your general instructions and without the need for your specific written instructions to act upon it. Nevertheless we reserve the right to request specific written instructions and may at our discretion refuse to act without such written instructions.

#### **Basis of charging fees**

Bedell Cristin Executors Limited does not charge fees based on the value of the assets in the estate. We follow the charging principles which have been laid down for solicitors in England and Wales for some time. These principles require that the fees for services be "fair and reasonable having regard to all the circumstances of the case". The circumstances which may affect the level

of fees include the following matters:

- the monetary amount involved;
- the complexity and novelty of the issues arising in connection with the estate administration;
- any specialised probate or other legal knowledge required;
- any particular time pressures or urgency in which the estate administration has to be conducted;
- the time spent in dealing with probate and estate administration matters;

Time spent on a matter will be recorded by all persons dealing with it and the total time recorded will be one, but not the only, factor taken into account in assessing the level of fees to be charged.

If specific legal problems are encountered, these may be referred to the law firm of Bedell Cristin, which may render a separate invoice for legal advice provided. The basis for charging will follow the same principles as set out above.

Occasionally, work will have been commenced leading to the anticipated grant of probate or letters of administration, but for some reason we will not be able to take out the grant. If this should apply, then fees will be due and payable for the period prior to the grant of probate during which work has been done.

We will always be willing to discuss the basis for charging in a particular estate at the outset. This may include the giving of an estimate of fees likely to be incurred in connection with the obtaining of probate and/or administration of an estate. However, where any such estimate of fees is requested and given, it is only an indication of the amount anticipated as being the likely charge and shall not be regarded as an agreed fee for the work or transaction unless specifically confirmed in writing as such by a director.

Where we are obliged to charge goods and services tax or any other similar tax in respect of any of the Services which we provide, we will add the relevant tax to our charges and disbursements at the applicable rate from time to time in force. All estimates or quotations given by us (or on our behalf) are given exclusive of disbursements and exclusive of any goods and services tax or any other similar tax unless otherwise expressly stated.

#### **Billing and payment arrangements**

The normal policy of Bedell Cristin Executors Limited is to bill estate administration matters, on an interim basis, at least quarterly or at the completion of the administration of the estate, if earlier. Provided assets have been recovered in the estate, it is our policy to deduct the fees, once billed, from the estate on an ongoing basis. If there are no liquid assets in the estate, then we reserve the right to look to the person or firm instructing us to obtain a grant of probate in Jersey.

All disbursements made in the administration of an estate both before and after the grant of probate or letters of administration (including charges for photocopying and facsimiles) will be charged on the next bill sent to you. We reserve the right to require payment in advance for significant disbursements, in particular in the stamp duty payable on obtaining the grant of probate which we have to incur on behalf of the estate. Where we outsource debt recovery to an external agency in the event of late or non-payment you will also be responsible for reimbursing us in respect of any fees or costs incurred in connection therewith.

At the discretion of a director, we may also request a payment on account of future fees to be incurred in the matter.

All bills are for settlement in sterling upon presentation. We reserve the right to charge interest at a rate of 10 per cent per annum if payment is not received in full within 30 days of the account date.

#### **Clients' account**

All monies and other liquid assets collected by Bedell Cristin Executors Limited in the administration of an estate will be held in a separate clients' account.

We reserve the right to pay fees and disbursements out of the monies held on behalf of the estate in our clients' account where an invoice for fees and expenses has been rendered for at least 20

days.

All monies held in a clients' account will earn interest which will be calculated and accrued on a quarterly basis in arrears. If the interest earned in a calendar quarter exceeds the amount of £20 the amount of such interest earned and accrued will be added to the balance of monies in the clients' account.

Where interest earned in the calendar quarter is equal to or less than £20 there will be no entitlement for you to receive interest on the monies in such account as the administrative costs of arranging for the calculation and accrual of such amounts of interest will exceed the value of the interest earned.

Unless otherwise agreed it shall not be our responsibility to comply with any reporting requirements which may arise in relation to the receipt of interest on monies held in the clients' account.

In the event of any bank at which a client account is held being subject to or undergoing any form of "insolvency" (such as desastre, liquidation, administration or any similar process), we shall not be liable for any losses, damages, liabilities, claims, costs and expenses howsoever arising from the insolvency, including without limitation, the loss of any or all of the monies held by the client account bank as referred to above.

We shall not be responsible for seeking or undertaking any due diligence on any bank's financial position.

#### **Tax on interest**

Jersey does not levy any withholding tax on interest save in certain situations in respect of an EU resident individual taxpayer. From 1 July, 2005 by agreement of the Jersey authorities, the European Savings Tax Directive applies to payments of interest made by a paying agent resident in Jersey to an EU resident individual taxpayer. For the purpose of our client due diligence procedures, in order to determine whether a person is an EU resident individual taxpayer, we may require you to provide us with your tax identification number of the country of tax residence or suitable alternative confirmation regarding your country of tax residence.

Where we are a paying agent and have to pay interest to an EU resident individual taxpayer, we will be required to retain the appropriate amount of tax from any interest payments made and account for the amount but without disclosing any identities to the taxation authorities in Jersey (for onward transmission of the amount to the taxpayer's country of tax residence). If the individual elects to allow disclosure of his identity the interest is paid gross and free of any retention.

#### **Communication**

When considered appropriate, we will communicate with you by way of letter, fax, e-mail or telephone, or any combination of the above, at the address or number last given to us by you in communication generally. We do not encrypt messages unless by prior agreement and cannot guarantee the security of any transmission in any event and accept no responsibility or liability in respect of the same. If you do not wish us to communicate with you by any particular method then you must instruct us accordingly.

We do not encrypt messages unless by prior agreement and cannot guarantee the security of any transmission in any event and accept no responsibility or liability for the same. If you do not wish us to communicate with you by any particular method then you must instruct us accordingly.

We reserve the right to record telephone calls.

#### **Electronic communications**

We may communicate electronically with you and other parties in relation to the Services. However, the electronic transmission of information cannot be guaranteed to be secure or virus or error free and such information could be intercepted, corrupted, lost, blocked, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. We both recognise the

systems and procedures cannot be a guarantee that transmissions will be unaffected by such hazards. We will need to access electronic information and resources in carrying out the Services including via an internet connection for remote access.

We will not be liable for misdirection, or any defect referred to above and you agree to accept these risks.

#### **Data protection and registration**

We collect personal information about our Clients and (where our Clients are legal entities, such as a company) their owners, controllers and personnel.

We use that information in order to be able to provide our services to our Clients. We also use it for other legitimate purposes, such as raising our invoices, complying with our anti-money laundering obligations and marketing our business.

Where appropriate, we share the information collected with other Bedell Cristin branded partnerships and group companies. We might also need to share this information with our auditors, insurers or bankers or with official authorities and regulators.

For more information on how your information is used, how we maintain the security of your information and your rights in respect of the information we hold on you, we strongly recommend that you read our privacy notice, a copy of which is available at our website:

[www.bedellcristin.com](http://www.bedellcristin.com)

You can also contact our data protection coordinator at [dataprotection@bedellcristin.com](mailto:dataprotection@bedellcristin.com)

#### **Client due diligence and anti-money laundering procedures**

As a matter of law, we are required to operate anti-money laundering checks and procedures in respect of certain services which are classified as the conduct of financial services business. We reserve the right to apply such checks and procedures (including in particular confirmation of identity and address/ place of business and verification of capacity to give instructions in the case of limited companies) in respect of all matters in which we are instructed. Any failure to provide such information as we request in order to enable us to carry out such checks entitles us to terminate our client relationship with you and we accept no responsibility or liability arising directly or indirectly as a result of our need to do this. Any information and documentation provided to us in order to enable us to operate such checks and procedures may be subject to disclosure and production pursuant to orders having legal effect in Jersey. In certain circumstances we are required to disclose information and documentation in respect of anti-money laundering procedures which we have undertaken in respect of our clients to third parties such as banks providing services to such clients. By instructing us in any matter and providing such information as we require, you will be taken to have consented to our onward disclosure of such information to third parties where appropriate.

#### **Variation and publication of these Terms of Business**

We reserve the right to vary these Terms of Business from time to time including during the course of acting for you in any particular matter. Where we do vary these Terms of Business in the course of acting for you, we shall use reasonable efforts to draw to your attention such a variation.

A copy of these Terms of Business and any variations thereto from time to time in force will be sent to you in hard copy form upon request at the outset of any matter. However, these Terms and any future variations thereto are published on the Bedell Cristin Website at [www.bedellcristin.com](http://www.bedellcristin.com) by way of public notice to all clients and prospective clients. If we have given you written notice of the existence of these Terms of Business on the Bedell Cristin Website and you have not requested a hard copy to be sent to you, then, by the publication of these Terms and any variations thereto on the Bedell Cristin Website, you shall be deemed to have agreed to these Terms.

#### **Termination of instructions**

Where Bedell Cristin Executors Limited has been named as executor in the will of a deceased client of Bedell Cristin, it will normally deal with matters leading to the grant of probate or letters

of administration. In certain cases, however, Bedell Cristin Executors Limited may have to decline the appointment as executor.

When a grant of probate or letters of administration has been taken out in the name of Bedell Cristin Executors Limited, it will continue to act in that capacity in the administration of the Estate until the conclusion of the administration, subject to the ultimate power of the Royal Court of Jersey to discharge an executor or administrator.

#### **Storage of data, files and papers**

After termination of the provision of the Services, we are entitled to retain all papers and documents which have come into existence in the course of our providing the Services until all fees and disbursements in connection with the provision of the Services have been settled in full.

Where, as part of providing Services, we have created internal memoranda, attendance notes and other documents for our own purposes then in accordance with accepted principles such documents shall belong to us and we shall not be obliged to hand over originals or copies of any such documents to you or to any other adviser appointed by you unless ordered to do so by a court of competent jurisdiction.

Subject to payment in full of all fees and disbursements, we will, on your instructions, provide originals (or, if so requested, copies) of any documents belonging to you which we are holding or which we have under our control and which have come into existence while we provided Services.

We may retain all documents belonging to you for a period of twenty years from the date of termination of our instructions in relation to a particular matter (and whether originals or copies) as we, in our absolute discretion, think fit and we may charge for the provision of any copies of such documents.

After twenty years, we may destroy all such documents at such time as we consider appropriate. In drawing this matter to your attention we will treat you as having consented to the destruction of such files as set out above. If we are requested and agree to retain files beyond such twenty year period, we reserve the right to charge for so doing.

#### **Complaints**

We hope that the services outlined above will provide a high quality, efficient and cost effective service in probate and estate administration matters. Should there be any complaints about the service which is provided, these should be directed in the first instance to Advocate Guy Le Sueur, head of the Private Client department at Bedell Cristin.

#### **Liabilities**

Our aggregate liability in contract or tort (including negligence) or under statute or otherwise, for any loss, liability or damage suffered by you or any other person that may arise from or in connection with our Services, shall be limited:

- to the amount specified by us in any letter of engagement from us to you or to any person acting on your behalf, in relation to those Services; or
- if no amount is specified, to an amount not exceeding £2 million.

Neither you nor any other person is permitted to bring any claim in respect of any loss, liability or damage arising from or in connection with our Services against any of our employees or agents even where our employees or agents have been negligent. This restriction shall not operate to exclude our liability for the acts or omissions of any of our employees or agents.

Any claim made by you or any other person in respect of any loss, liability or damage arising from or in connection with our Services, whether in contract or tort (including negligence) or under statute or otherwise, must be made:

- where those Services have been delivered, within three years of the date on which the work giving rise to the claim was performed; and
- if those Services have been terminated, within three years of the date of termination (subject to the above),

and in either of these cases that shall be the date when the earliest cause of action (in contract or tort (including negligence) or under statute or otherwise) shall be deemed to have accrued in

respect of the relevant claim. For these purposes, a claim shall be made when court or other dispute resolution proceedings are commenced.

Our liability to you under or in connection with our Services shall be limited to that proportion of the total losses, damages, costs or expenses, after taking into account your contributory negligence, if any, determined having regard to the extent of our responsibility for them. In the event that you are being advised by one of several professionals and a limitation of liability has been agreed in relation to one or more of them, you agree that any liability in connection with our Services will be reduced to the extent of any contribution which Bedell Cristin would otherwise have been entitled to recover from any other adviser but which we were unable to recover as a result of you having agreed a limitation of liability with that other adviser.

Nothing in this paragraph shall limit or exclude any liability which cannot lawfully be limited or excluded.

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