

APPLEBY

GUIDE

OFFSHORE OPINIONS IN GUERNSEY



GUERNSEY

As a British Crown Dependency, Guernsey has a stable and reliable legal system. With a long history of political stability, a highly respected regulatory framework and its accessibility via an established infrastructure make it a desirable international offshore destination for businesses. Guernsey's agile and pro-business government, low tax regime and compliance with international standards of regulation and transparency provide a secure and competitive choice for company structures.

INTRODUCTION

This guide explains what Guernsey legal opinions are and how they provide assurance that a Guernsey party has the legal capacity to enter into a transaction and that the relevant documents are valid, properly executed, and enforceable. It is intended as an overview and does not provide a comprehensive summary of the law or the full range of issues that may be addressed in a legal opinion.

This guide was last updated in March 2026. This guide is for general guidance only and does not constitute definitive advice. Please contact one of our lawyers if you require more detailed information.

Further publications are available from applebyglobal.com

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A MATTER OF OPINION

WHAT ARE LEGAL OPINIONS?

We often hear in finance and corporate transactions that a party requires a “legal opinion” in order to assist with the completion arrangements.

SO, WHAT ARE THEY AND WHY ARE THEY SO IMPORTANT?

A legal opinion is a legal document prepared by a Guernsey law firm and given for the benefit of the addressee to provide various confirmations in relation to:

- the capacity and power of a counterparty to enter into a transaction document and due execution of it (**Capacity, Power and Due Execution Opinions**); and/or
- the enforceability of a transaction document against the counterparty (**Enforceability Opinions**).

Understandably it can be extremely reassuring for a party, often domiciled in a different jurisdiction to its counterparty and/or entering into agreements governed by a foreign law it does not typically operate under, to receive legal confirmations around these issues in order to move ahead and close out the deal.

Equally for those parties domiciled in the same jurisdiction as the counterparty and entering into agreements governed by their domestic law, routinely an opinion is nevertheless required despite the familiarity, to provide additional comfort.

Legal opinions may be needed in a wide variety of transactions from financings to mergers and acquisitions, from fund launches to UK Land Registry requests and a myriad of other examples in between. They may cover borrowers, guarantors and indemnifiers, sellers and buyers and holding companies. The scope is extremely wide in practice.

In the world of multi-jurisdictional cross border negotiations, as lawyers, we see opinions every day.

WHAT DO OPINIONS COVER, MORE SPECIFICALLY?

CAPACITY, POWER AND DUE EXECUTION OPINIONS

Capacity, Power and Due Execution Opinions may be needed where there is a Guernsey company entering into, for example, a loan agreement as a borrower with a bank. It is customary for the bank to require a legal opinion to gain the comfort to proceed with the loan, knowing that the Guernsey company has the capacity and power pursuant to local legislation and in accordance with its constitutional documents, to enter into the transaction document.

The confirmations will typically cover:

- Due incorporation and valid existence (public searches ascertain this);
- Power and capacity to enter into the transaction documents or any restrictions (from company law and constitutional documents);
- All corporate action has been taken (by way of board resolutions and occasionally shareholder approvals);
- No ongoing litigation on the public record (which may affect its creditworthiness);
- Due execution of the documents by the directors or other authorised signatories; and

- Valid choice of governing law and courts.

ENFORCEABILITY OPINIONS

Enforceability opinions may be needed to obtain comfort in relation to the valid, binding and enforceable nature of the transaction document and the obligations it seeks to impose on a counterparty, should there be a need to enforce and potentially bring a contractual claim.

This may be needed where, for example a bank is taking security over a Guernsey asset (lawyers would call this an asset with a Guernsey "situs") and accordingly the governing law of the security agreement, for instance a security over shares in a Guernsey company, will be Guernsey law. The bank here would be looking for comfort that the security agreement will be effective under Guernsey law, should it need to enforce its security, i.e. will it work? In this instance, it is important to note that the counterparty may not be a Guernsey company and accordingly there will be no confirmations in relation to capacity, power and due execution. In this example, a bank would look to lawyers in the jurisdiction of the counterparty to prepare the capacity, power and due execution opinion, which will dovetail with the Guernsey enforceability opinion.

Conversely, an Enforceability Opinion may be needed where a Guernsey company is entering to a foreign law (i.e. non-Guernsey law) governed document. In this example, whilst Guernsey law cannot provide confirmation as to the enforceability of the transaction document under the foreign governing law, confirmation can still be given that there would be no Guernsey law reason to prevent the enforceability.

TAILORED OPINIONS

It may of course be that at times, both a Capacity, Power and Due Execution Opinion and an Enforceability Opinion are needed where a Guernsey company is entering into a Guernsey law governed agreement.

Whilst often we are asked to opine on standard Guernsey companies, we will also receive requests for opinions on trustees of trusts, general partners of limited partnerships, protected cell companies, investment funds and other vehicles, or combinations of the above.

It is evident then that the scope of an opinion will need to be carefully tailored to the transaction in focus and the counterparties it is to cover and may indeed cover a wide myriad of other matters over and above the core confirmations discussed above.

APPLEBY

At Appleby we work on the provision of legal opinions every day. Often requests are made at a late stage and time pressure is on to get the deal over the line and so you need an experienced law firm able to assist.

For more specific advice on offshore legal opinions in Guernsey, we invite you to contact one of the following:



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ABOUT APPLEBY

Appleby is one of the world's leading international law firms. Our global teams of legal specialists advise public and private companies, financial institutions and private individuals. We are a full service law firm providing comprehensive, expert advice and services across corporate, dispute resolution, property, regulatory and private client and trusts practice areas. We work with our clients to achieve practical solutions whether from a single location or across multiple jurisdictions. We have offices in ten highly regarded, well-regulated global locations, operating in nine and practicing the laws of eight jurisdictions. Our office locations include the key international jurisdictions of Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, Isle of Man, Jersey, Mauritius, and the Seychelles, as well as the international financial centres of Hong Kong and Shanghai. Our global presence enables us to provide comprehensive, multi-jurisdictional legal advice at the times most beneficial to our clients. We are regularly recognised for our professionalism, integrity and excellent client service, and these are the values we pride ourselves on and are at the core of our business.

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