

Crociani case gives welcome guidance on use and effect of trust jurisdiction

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Until relatively recently there had been little judicial guidance regarding the use and effect of trust jurisdiction clauses.

That changed following a series of judgments in the Jersey case of Crociani, culminating in the judgment of the Privy Council in November last year. *Crociani & Ors v Crociani & Ors* [2014] UKPC 40 provided a number of lessons to be learned for advisers.

In particular, the Privy Council considered the meaning of a clause in a trust deed that provided for a change of proper law, to that of the place where a successor trustee was resident or incorporated, and 'thereafter the rights of all persons and the construction and effect of each and every provision hereof shall be subject to the exclusive jurisdiction of, and construed only according to the law of the said country which shall become the forum for the administration of the trusts hereunder' (emphasis added).

The highlighted expressions are often seen in so-called 'jurisdiction clauses', however the board considered that as stand-alone expressions, they had no well-established meaning.

Forum for administration

The appellant contended that this phrase was a reference to the court which is to enforce the trust. However the Privy Council held that this phrase had no well-established technical significance. For example in certain circumstances, 'forum' can be a reference to a court, but it can equally be used to refer to a place for any purpose.

As a matter of construction of the deed in question in this case, the Privy Council considered it perfectly feasible that the draftsman intended to stipulate where the trust's affairs were to be

organised or run, as it could affect the way in which the trustees are taxed.

Exclusive jurisdiction

Again, the appellant contended that this phrase conferred exclusive jurisdiction on the courts of the country in question. However the Privy Council held that, properly construed in the context of the deed in question, the purpose of the exclusive stipulation was to ensure that all issues concerning the trust were to be governed by the same law, thereby avoiding the risk of *dépeçage*, permitted by article 9 of the Hague Convention on Trusts 1985.

Conclusion

The guidance from the Jersey Courts is clear: if the intention is to identify that the proper law is to apply to all aspects of the trust, from its inception to its execution, there are better and clearer ways of saying so than by referring to the 'exclusive jurisdiction' of the proper law.

If the intention is to tell the world (or its tax authorities) that a trust is domiciled and administered in a particular place, there are better and clearer ways of saying so than by referring to the 'forum for administration'.

Moreover a reference to 'exclusive jurisdiction' or 'forum for administration' may have the consequence that, whatever the intention of the draftsman, exclusive jurisdiction is conferred over all trust disputes.

The intended meaning should therefore be readily apparent from the trust instrument. If it is not, but the instrument contains a power of amendment, it may be a proper and prudent use of that power to introduce a clearer provision.

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