

The intermeddling offence in Jersey

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The intermeddling offence in Jersey: revised guidelines issued

It is a criminal offence in Jersey to take possession of or in any way administer the movable estate of a deceased person prior to a grant of probate being obtained (the **Intermeddling Offence**). Her Majesty's Attorney General (**HMAG**) is responsible for deciding whether to commence criminal proceedings in Jersey, including for the Intermeddling Offence. The need to comply with Jersey's probate requirements was underscored by the recent conviction of two financial services firms for intermeddling.

With effect from April 2020, HMAG has issued revised guidelines^[1] in relation to the Intermeddling Offence (the **Guidelines**) that:

- clarify when it is necessary for the Registrar of Probate to refer a case of suspected intermeddling to HMAG; and
- provide additional clarification, specific to financial services businesses, on the public interest factors that HMAG will apply when deciding whether to prosecute.

Whilst the Guidelines do not suggest a 'sea change' in terms of HMAG's approach to criminal proceedings for the Intermeddling Offence, they do give a helpful indication of the issues and risks on which HMAG will focus in deciding whether to prosecute (and potentially in any prosecution).

The Intermeddling Offence

Unlike the UK, Jersey imposes criminal liability on those who intermeddle in relation to a deceased's 'movable estate' (i.e. personal or movable property). Article 23(1) of the Probate (Jersey) Law 1998 sets out the offence:

"...if any person, other than a person acting in accordance with Article 19(3) or any other enactment, takes possession of or in any way administers any part of the movable estate of a deceased person without obtaining a grant, the person shall be guilty of an offence and liable to a fine or to imprisonment for a term not exceeding 12 months or to both."

The Intermeddling Offence can therefore capture (amongst others) a person who, in the absence of a Jersey grant, administers:

- all of the assets that comprise the movable estate of a Jersey domiciled person; or
- the Jersey situs assets of a non-Jersey domiciled person (being the scenario in the two convictions referred to below).

However, Article 23(2) provides for a carve-out from the offence. It provides that "[n]o person shall be guilty of an offence **by reason only** of the fact that the person has made arrangements for disposing of the body of the deceased person in any manner authorized by law or custom or from placing in safe custody or otherwise preserving the movable estate of the deceased" (emphasis added).

As matters currently stand, there is limited case law in Jersey on the precise scope of the Intermeddling Offence. There have only been two reported prosecutions for the Intermeddling Offence, namely *AG v Abu Dhabi Commercial Bank PJSC, Jersey Branch* [2018] JRC 192 and *AG v Standard Bank Jersey Limited* [2019] JRC 156. Both of these resulted in the conviction of a Jersey banking institution for paying away deceased clients' funds prior to a Jersey grant having been obtained. The substantial fines of £25,000 and £35,000 reflect the seriousness with which the Royal Court views compliance with Jersey's probate requirements.

The Guidelines: General guidance

The Guidelines make clear that the Registrar of Probate is required to make a referral if any of the following conditions are met (and it is reasonable to infer these factors will carry significant weight when HMAG is deciding whether to prosecute a suspected Intermeddling Offence):

1. The amount concerned is in excess of £10,000.
2. There are a number of persons entitled to a share of the estate and those individuals' interests have been prejudiced by the intermeddling.
3. The person who has intermeddled is a member of a profession, membership of which would suggest either awareness of the requirements under the *Probate (Jersey) Law 1998* or awareness that such requirements are likely to exist.
4. It appears that the person who has intermeddled has acted in bad faith.

The intermeddling has come to light through a person other than the intermeddler.

It is worth noting the third of the above requirements: it is likely many regulated financial institutions will have difficulty arguing they ought not to have been aware of the existence of probate requirements. It follows that an institution can act in good faith but still face (potentially severe) criminal sanctions.

HMAG has also set out a list of factors which, if all met, do not require the Registrar of Probate to notify HMAG – these are that: the amount concerned is less than £10,000; the intermeddler acted in good faith and without ulterior motive; the beneficiaries have indicated their approval; and the offender had no prior experience of legal matters and must have (in effect) self-reported. It can be inferred that HMAG is only excluding from his view those cases where the offender has the lowest level of fault.

The Guidelines: Guidance specific to financial services businesses

HMAG has published a code (the **Code**) that sets out his approach to decisions to prosecute generally. By way of the Guidelines, HMAG has provided further clarifications as to the factors he will consider when deciding whether to prosecute a financial services business for the Intermeddling Offence specifically, namely:

1. The trigger event for the payment away of the deceased's movable estate was a decision taken by a bank or financial institution in another jurisdiction over which the Jersey bank or financial institution had no control.
2. The estate which has been subject to an alleged act of intermeddling comprises complex asset structures held in multiple jurisdictions.
3. The alleged intermeddling took place as the direct result of an act by an automated system.
4. The alleged intermeddling took place as the direct result of an unavoidable manual error by a bank or financial institution in Jersey.

These four factors above suggest that HMAG's focus will be on the extent to which the firm is at fault for what happened. This is consistent with the Code, which gives as other relevant factors: that the offence was committed as a result of genuine mistake or misunderstanding; and whether the defendant has put right the loss or harm caused.

It is reasonable to infer that only those firms with the lowest level of fault can have any degree of reassurance that they will not face a prosecution.

Conclusion

Firms must ensure that they comply with all legal and regulatory requirements that apply to them, which includes the Intermeddling Offence. It would be prudent for firms (and in particular regulated financial services businesses) to ensure that they have put in place appropriate systems and controls to ensure compliance with Jersey's bespoke probate requirements, and to test them to ensure they are effective in practice.

In the absence of appropriate systems and controls, a firm that commits the Intermeddling Offence faces a real risk of a criminal prosecution, and the risk that the Court takes the view that (to deter future misconduct) it must impose increasingly hefty fines.

[1]

<https://www.gov.je/SiteCollectionDocuments/Crime%20and%20justice/ID%20AG%27s%20guidance%20on%20intermeddling%20Ap>

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