

Trust Essentials: April 2021

Newsletters - 16/04/2021

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The courts of the BVI, Cayman, Guernsey and Jersey have shown exceptional resilience during the pandemic, adapting swiftly to a changed environment to ensure minimal disruption to hearings.

Consequently, we have continued to see judgments being handed down in complex trust cases, a number of which our team successfully acted in and report on below, including our [lead article from partner Sandie Lyne](#) who writes on a case where the Guernsey Court of Appeal provided guidance for trustees when issues of trust construction arise. Sandie will be speaking alongside Simon Davies at a STEP Guernsey lecture on 28 April titled 'To bless or not to bless?' - find out more information [here](#).

There have been some significant amendments to wills and probate legislation to enable continued access to these services. Incoming changes to BVI trust and estate laws will also bring modernisation in this area and greater certainty in uncertain times.

Our team continues to grow - we were delighted to recently welcome [new partners Matt Guthrie](#) (who takes over the reins of Private Wealth in Guernsey from Gavin Ferguson who is focussing on personal fiduciary matters) and [Catherine Moore](#), also in Guernsey. [Jacqueline Loh](#) has joined our Hong Kong team as Head of Ogier Global's Private Wealth services in Asia and new counsel [Christopher Levers](#) joins the Dispute Resolution team in the Cayman Islands.

We were very pleased to take home [gold across the board at the recent Citywealth IFC Awards](#) for our Cayman, Guernsey, Hong Kong and Jersey teams and see [16 of our team members recognised in the Private Client Global Elite](#). In other recognition for our team, global head of Private Wealth [James Campbell](#) has been named in the [2021 eprivateclient 50 Most Influential](#) and is the only Jersey lawyer [elected as an International Fellow of the prestigious American College of Trust and Estate Counsel \(ACTEC\)](#). Head of Dispute Resolution in Guernsey [Mathew Newman](#) was named

Litigator of the Year at the Citywealth IFC Awards.

Enjoy Trust Essentials - to discuss any private wealth topics, please get in touch with your regular Ogier contact or any member of the Trusts Advisory Group.

Meet our Trusts Advisory Group

Jersey Royal Court blesses the momentous decision of the representative of minor and unborn beneficiaries

In its recent decision in the *Matter of the A Trust and the B Trust* [2021] JRC 019, the Royal Court considered for the first time the blessing of a momentous decision of a Court-appointed representative of minor and unborn beneficiaries of a trust to enter into a settlement agreement in respect of claims against the trust. While there can be no doubt that the decision to bless the decision of the representative of the minor and unborn beneficiaries was confined to the unusual facts of this case, it is an interesting decision nonetheless as it establishes the circumstances (albeit limited) in which the Court will bless such a decision.

Guernsey Court of Appeal provides guidance for trustees when issues of trust construction arise

This article considers a recent Guernsey Court of Appeal judgment regarding the interpretation of a trust instrument. It provides useful guidance for trustees to apply when issues of construction arise in Guernsey law trusts.

Upcoming amendments to BVI trust and estate laws

BVI has recently introduced bills to amend the current Trustee Act (the **TA**), the current Virgin Islands Special Trusts Act (**VISTA**), the current Probates (Resealing) Act (the **Resealing Act**) and the current Administration of Small Estates Act. This article highlights the key changes and their implications.

Jersey Royal Court intervenes to set aside a trustee decision

In the case of *B v Erinvale*, the Royal Court intervened to set aside a decision of the trustee not to make the spouse of the settlor a beneficiary in her own right. The Court's decision has implications

for trustees and their obligation to act reasonably despite the trustee setting out reasons for its original decision.

Stingray Trust: clarification on the scope and meaning of Cayman firewall legislation and forum for administration clauses

The recent judgment in the case of *Geneva Trust Company v IDF and MF or Re Stingray Trust* (the **Judgment**) is the latest in a line of decisions of the Cayman Islands courts considering the meaning and scope of the Cayman firewall provisions. The Grand Court has now provided important clarification about the effect of Section 90 of the Trusts Act 2020[2] - that it does not operate to bestow exclusive jurisdiction on the Cayman Islands courts (as previous cases have suggested) and that common law principles of *forum non conveniens* still have relevance and application in the context of disputes concerning Cayman Islands trusts.

The Court also provided further guidance on the application of forum for administration clauses in Cayman trusts.

Advance healthcare directives under Cayman law

An advance health care directive is also known as a living will. It is actually not a new concept but is new to being recognised in the Cayman Islands. In 2019 the Health Care Decisions Act was implemented in the Cayman Islands.

Administering an estate with Cayman Islands assets

The administration of deceased estates in the Cayman Islands is governed by the Succession Law, 2006 Revision (the **Law**) and its accompanying Probate and Administration Rules, 2008 Revision (the **Rules**). As required by the Law, when an individual dies owning Cayman Islands assets, some form of grant of representation issued by the Grand Court of the Cayman Islands is usually required before the Cayman assets can be administered. This will be a grant of probate in the case of an individual who has died leaving a valid will; or letters of administration on intestacy or with will annexed where there is either no valid will or it is not possible for the executor named in the will to apply for probate. It is also possible to reseal a foreign grant before the Grand Court of the Cayman Islands if the foreign grant is of like force and effect to a Cayman grant, as confirmed by foreign law evidence.

Jersey's wills and probate law and COVID-19: the current state of play

The pandemic has necessitated adaptation on everyone's part, with restrictions on travel and in-person gatherings altering, perhaps indelibly, the way in which we communicate and interact with each other. The legal world is no different, with COVID-19 restrictions presenting some significant challenges to wills and probate procedures all at a time when people's minds have naturally turned to estate planning.

Foundations and grounds for mistake: significant new judgment for the Channel Islands

In its recent decision in the case of *B and C v D, E, F and others* [2020] JRC 169, the Royal Court of Jersey (the **Court**) has considered whether a Jersey law foundation and endowments made to such a foundation can be set aside *ab initio* on the grounds of mistake. The Court concluded that although the endowments made to the foundation could be set aside, the foundation itself could not be set aside *ab initio*.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

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