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Ogier Cayman Wills and Estates Practice

A Q&A with partner Anthony Partridge

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1. What does the Ogier Cayman estates practice involve?

Most law firms in Cayman advertise expertise in probate and letters of administration matters, but in actual fact, this is such a niche area of the law that very few attorneys have significant experience in this space. Advice on estate matters in Cayman tends to be handled by generalists within Private Client and Trusts teams. I am fortunate enough to have had the opportunity to develop a significant estates practice since qualifying as a Cayman Islands attorney more than a decade ago. Besides the very specific requirements of Cayman Islands law in respect of estate matters, there are further complicating factors – the international nature of the clients that we deal with (and the issues that can cause in terms of interaction with other jurisdictions and questions of domicile) and the very significant value of the estates that we deal with here in the jurisdiction. Some of the world's wealthiest people have assets in Cayman, and that can lead to disputes – for that reason, although I am not a disputes lawyer or a contentious trusts and estates specialist, I have worked on many occasions with my litigation counterparts on matters relating to disputes over Cayman estates in the most fascinating and interesting of circumstances.

2. How does the process work?

The Succession Law of the Cayman Islands (2006 Revision) provides in very clear terms that no person shall take any steps to administer the estate of a deceased individual without first having obtained some form of grant from the Grand Court, which is effectively a court order. That requirement necessitates somebody commencing proceedings in the Cayman Islands Courts in order to obtain the authority to deal with a deceased person's Cayman Islands assets and therefore, it is essential to take legal advice from a Cayman Islands attorney. In order for a Cayman attorney to act, such attorney needs to understand the particular circumstances involved. Where is the deceased from? Where were they domiciled? Did they die with a will or not? Who is the person entitled to apply for the grant to the Cayman Islands Court? Is it possible to reseal an existing grant from a foreign jurisdiction? These are all relevant questions which will need to be bottomed out at the commencement of the instructions. The court process can be complicated and knowing the filing requirements and procedures is crucial – as is dealing with any requisitions from the Civil Registry in a proper and timely manner. It is also important to ensure that clients understand the timeframe in which the process operates – it is not a rubber stamping exercise, the Court takes its roles in these matters seriously and demands full adherence to the rules. In England, for example, and in Scotland, you can get a grant sometimes in three to four weeks. But here it is three to four months, in addition to which, holiday periods can also naturally slow things down.

3. Why is there an international element to Cayman estates practice?

Simply, because the client base of the Cayman Islands' financial services industry is an international one. Our clients are from all over the world – for example we are currently dealing with estate matters from South America, the Middle East and Asia. There really isn't a specific area that we see this type of work coming from. Matters can be particularly complex when dealing with foreign estates from civil law countries because you need to understand who is entitled to apply to the court for a grant in the country where the deceased was domiciled at the time of their death, and what the legal process for such application is in the country of domicile. In those circumstances, a lawyer qualified to advise on such matters will be required to provide affidavit evidence in the Cayman proceedings before the Grand Court. In these cases it is likely that you will be dealing with documentation – sometimes a great deal of documentation – that is not in English, and which will need to be translated. It may be necessary to demonstrate the translator's competence to the Court's satisfaction. Evidence is also another complication, because what constitutes a death certificate may not be the same in a foreign country, either in form or in the relevant civil authority empowered to issue such a certificate – and all of this will have to be established to the satisfaction of the Court.

4. Are disputes over wills and probate/letters of administration procedures common?

Disputes can occur, and can be difficult for the same reasons as described above in terms of the international element of the Cayman Estates practice. I assist regularly, for example, when dealing with a contentious estate matter. So my practice does cross-over to the contentious estate side, where the assistance of the Court may be necessary. For example in the construction of a specific clause of a will. So there is certainly a crossover with the dispute resolution side of our practice.

5. What can clients do to reduce the likelihood of complications in this area?

One of the steps that we see clients take quite frequently to reduce these complications, and on which we regularly advise, is the establishment of a trust. This can simplify the estate planning process significantly, because it removes assets from a person's individual estate and quite frankly, may avoid probate altogether. More and more, we are seeing clients setting up trusts during their lifetime to avoid complications, costs and delays during the probate process. In the hypothetical example of a wealthy individual who has established a Cayman company during their lifetime – you could set up any one of a Cayman, Jersey, Guernsey or BVI trust on their behalf, removing the shares out of the person's personal estate thereby placing them in trust. Such action would remove the need for a Cayman probate application on death, providing there were no other Cayman assets in the individual estate upon passing.

6. What are the most difficult matters that you have been involved in?

Fundamentally, probate and letters of administration applications – and in particular, the international aspects of such applications – are complex areas of law. It is certainly true to say that an international dimension can add a significant layer of complexity. The areas that spring to mind are matters that I have dealt with in relation to estates involving Japanese, Brazilian and Chinese law. The Japanese case was complicated not just by the international element, but also because it was a disputed situation, but thankfully we had access to Japanese language capabilities in the firm, which assisted greatly. That is one of the reasons why an international law firm such as Ogier – which has a footprint in Europe and Asia – is regularly called upon in these matters. The Chinese estate was very unusual because there was difficulty in obtaining evidence of death to the satisfaction of the Cayman Islands Court – although ultimately the matter was satisfactorily dealt with. In the Brazilian matter, there were issues due to the fact that both notarial and court processes are available under Brazilian law, and it turned out that our clients had obtained their local grant under a notarial process which was not recognised in the Cayman Islands.

The information and expressions of opinion contained in this guide are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

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