

Guernsey case on removal of trustee of Guernsey law trusts

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Ogier in Guernsey has successfully achieved the removal of Salamander Trust Company Limited (Salamander) as trustee of two Guernsey law trusts (the Trusts) and the appointment of Jupiter Trustees Limited (Jupiter) in its place.

Background

Salamander had been trustee of two Guernsey law trusts since 2015. In Spring 2018 the beneficiaries' family office was made aware that all the directors of Salamander had resigned their respective offices following the arrest of at least one of the principals behind Salamander. The Trusts were effectively paralysed, with the trustee (Salamander) still in existence but unable to operate due to lack of directors. The provisions of the two trust instruments were such that it was not possible either to remove Salamander or to appoint a new trustee without the assistance of the Guernsey Court.

Law

An application was made under sections 18(1)(c)(iv), 18(3), 20(4)(a) and 69(1)(a)(ii) of the Trusts (Guernsey) Law, 2007 (the Law) for orders that Jupiter be appointed trustee of the Trusts and Salamander be removed as trustee of the Trusts. The Law confers upon the Royal Court the discretionary power to remove and appoint trustees, and the Guernsey case of *In the matter of the K Trust* together with the leading English case authority of *Letterstedt v Broers & another* and are of assistance in determining when such discretion should be exercised. There is no rule beyond the very broad principle that the main guide for exercising so delicate a jurisdiction as that of removing a trustee is 'the welfare of the beneficiaries and the competent administration of the trust in their favour'.

The fact that Salamander had no directors in office and was 'rudderless' meant that it did not have proper capacity to execute its duties and it was clearly in the beneficiaries' best interests to

have Salamander removed as trustee and Jupiter (a professional respected trust company registered and regulated in Guernsey) appointed trustee of the Trusts.

The case also included various successful applications relating to privacy, leave to serve out of the jurisdiction and delivery up of the property of the Trusts, and Salamander was further ordered to pay the costs of the application on an indemnity basis.

Lessons

1. Ensure the terms of the trust instrument clearly provide for:
 - a. when a trustee will cease to be trustee (and perhaps also for a party to have power to remove the trustee);
 - b. appointing a new trustee in a variety of situations (perhaps conferring such a power on a protector or other trusted third party);
2. Choose a well-respected professional trustee in a robust well-regulated jurisdiction; and
3. Choose a jurisdiction with a robust trust law and first class court system for the governing law of the trust.

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