

Cross-border estate planning – where a Jersey grant is needed for international assets

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Cross-border estates are often complex, requiring clarity and care to ensure that the wishes of the testator (the person making a will) are carried out after death.

Where things do go wrong, a will can be entirely or partly invalid – creating uncertainty over how assets should be disposed of, and giving rise to potential disputes between beneficiaries.

A common scenario where cross border estate planning can go wrong is when the situs (where property is treated as being located for legal purposes) of an asset is not properly understood.

Take the simple example of a bequest of shares in a BVI company. A testator may assume a BVI will and a BVI grant of probate would be required to transfer BVI shares on death. But what is often overlooked is the situs of shares that are held pursuant to a nominee agreement. Such nominee arrangements are commonplace in Jersey for various reasons and nominees are often Jersey-based administrators.

A nominee agreement is essentially a declaration by the nominees that they will hold the equitable interest in the shares to the order of the testator. Nominee agreements also include the applicable law which will determine where the nominee ship can be enforced. This is usually the same law where the nominee is located.

Although our well-meaning testator has executed a will in the BVI, the effective situs of the shares will be determined by the nominee agreement. Therefore Jersey nominees will usually insist upon a Jersey grant of probate before taking instructions from the executor to transfer the shares.

Issues can naturally arise where the scope of the will does not cover Jersey situs assets, creating an intestacy, or where the will is formally or essentially invalid in Jersey. Disputes can also arise between beneficiaries where the testator has, acting on a misapprehension using our example,

bequeathed "all assets in Jersey" to one beneficiary, not realising it also includes BVI shares which were intended for a different beneficiary.

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