

Christian Hay to speak at the International Cross Border Estate Planning for Divorce conference

January 2016

Christian Hay will be speaking on the subject at the IBC Cross Border Planning for Divorce conference in London on 27 January, looking at the extent and limitations of the so-called "firewall provisions" in Guernsey and Jersey's trust legislation.

Many marriages now end in divorce and while overall marriage numbers are coming down, as more partners co-habit instead, the number of second and third marriages is increasing. Establishing an offshore trust to safeguard a proportion of pre-nuptial wealth has long been a common and popular form of asset preservation, especially in the days before pre-nuptial agreements were taken seriously by UK courts. As independent legal jurisdictions with mature and well regulated trust industries, which traditionally took a robust approach towards defending the assets held in trusts, much of this wealth has historically found its way to the Channel Islands. Offshore trustees are frequently required to deal with attempts to get information on, and then access to, such trust assets in the course of UK divorce proceedings.

The advice for trustees when contacted by lawyers acting for a divorcing spouse is to consult advocates at the earliest opportunity to avoid being in breach of fiduciary duty. If in doubt a trustee can seek guidance and approval from the courts in the Channel Islands if they find themselves becoming embroiled in litigation, or simply if they feel (and increasingly they do) that the decision they are being asked to take is a "momentous" one.

Where an aggrieved spouse already has confirmation as to the existence of an offshore trust, and its value, the English courts tend to take one of two approaches. Firstly they may seek to vary the offshore trust by treating it as a 'nuptial settlement', not withstanding the fact that the trust is held offshore and not subject to the laws of England & Wales. Alternatively, the English courts may make an ancillary relief order which takes into account the proportion of the offshore assets assumed to comprise matrimonial assets. Both approaches provide headaches for the offshore trustee. The trust may have to be broken up or a distribution made in order for the settlor or beneficiary to meet the settlement ordered by the UK court or, in the case of an attempt to vary the trust, protection may be offered by way of local "firewall" legislation aimed at protecting Guernsey and Jersey trusts from interference by foreign courts.

More information on the conference and a full line up of speakers for the day can be found [here](#).

For more information please contact:



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