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Reflections on Crociani v Crociani - a year on

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It is just over a year since the Privy Council handed down its judgment in *Crociani v Crociani*. Now that the dust has settled and the hype surrounding the decision has subsided slightly, an opportunity arises to reflect on the legacy of that decision. In particular, to what extent should trust practitioners be amending their precedents or seeking to amend the instruments of existing trusts in light of what the Privy Council said?

The answer for most is likely to be that there is no need for any radical redrafting of precedent clauses – the only jurisdiction clauses which are truly vulnerable following the *Crociani* decision are those which were unclear in any event. The Privy Council was very clear in *Crociani* that it was called upon to construe the clause before it and was doing no more than seeking to resolve the apparent tensions in the drafting. In addition, the clause in question in *Crociani* was relatively unusual insofar as it provided for a "mobile" proper law and appeared to attempt (unsuccessfully, as it turned out) to provide for the exclusive jurisdiction clause to mirror the jurisdiction whose laws were the proper law of the Trust at any given time. This is not a common feature of Jersey trusts.

There will, however, be some trusts that are affected, in particular trusts for which the laws of Jersey are not the original proper law or trusts whose proper law is Jersey law but which are in fact administered abroad. In cases such as these, careful consideration may need to be devoted to whether the drafting of the relevant instrument still achieves what was intended. An example of language which may have to be revisited is the phrase *"Forum for Administration"*, in respect of which doubts were raised by the Privy Council as to whether it always meant the same thing. Again, those observations were confined to the facts of the case, but it is nevertheless clear that some attention will need to be devoted to the question of whether in a given instrument it points to a judicial forum or simply a physical place in which administration occurs. Similarly, if there is to be an exclusive jurisdiction clause (or at least such a clause appears to have been intended), some thought may need to be given to whether it continues to function as such in light of some of the points raised in *Crociani* and, if it does, in favour of which jurisdiction it operates.

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