

CONTENTIOUS DECEASED ESTATES AND THE VALUE ADD OF THE RIGHT PROFESSIONAL INDEPENDENT ADMINISTRATOR



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Death is one of the few inevitabilities that affects everyone.

The Covid pandemic has further compounded the position and increased death rates across the globe.

Given this increase, it is not surprising that we have also seen an upturn in the number of family disputes following the death of a family member and the need for private client and probate practitioners to deal with a greater number of contentious deceased estates.

This escalation in contentious deceased estates has been brought about for various reasons including:

- The Wills Act 1837 (Electronic Communications) (Amendment) (Coronavirus) Order 2020, which allowed the remote witnessing of wills after 31 January 2020. There are concerns for wills witnessed via this method prior to 30 January 2020 and also that this method may result in an increase of fraud or undue influences cases, given that the witnesses were not in the same room as the testator when the will was signed.
- The increased awareness of wills and the ability to now witness wills at home, means there has been an

increase in the number of homemade DIY wills, which often do not meet the statutory requirements.

- The higher value of estates, due in part to the rise in property prices over the last century, and people's expectation and reliance on the anticipated inheritance.
- The increased use of complex multi-jurisdictional structures and trust to hold family wealth and
- The rise in number of multi layered families and ultimate beneficiaries.

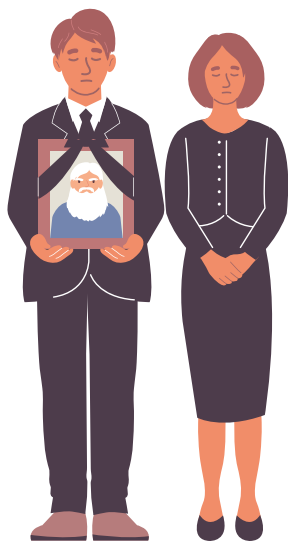
It can often be the case that where there is a dispute following the death of a family member, that it cannot be resolved whilst the current personal representatives or executors are in place and often requires Court intervention and ultimately the appointment of independent administrators.

In some cases, the selection of the independent administrator is left to the president of the law society closest to the deceased's place of residence, but this process can take circa.6 months and does not provide the beneficiaries with any visibility or choice as to who will be appointed.

Whereas, by nominating a professional independent administrator, who you know has the skills specifically needed to address the issues within the deceased estate, can ensure a far more efficient appointment and a more cost effective process in the long term.

We have seen an escalation in enquires relating to deceased estates and being nominated as independent administrators to deal with the administration of the estate in the following situations, for the reason set out below:

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1. There is a suspicion that assets have gone missing prior to, or post death

- As forensic accountants and asset recovery specialists, Grant Thornton UK LLP (GT) can use our Corporate intelligence and forensic capabilities to investigate what assets the deceased held prior to death (or at the relevant date of dissipation) and what their respective values may have been at the relevant dates. Also, if assets have gone missing, or appear to have been dissipated or transferred out the estate, we are able to trace those assets and recover them as an integral part of the independent administrator role, without the need to instruct additional service providers.

2. The assets identified to be recovered are held in various offshore jurisdictions

- As accounting professionals who are part of a global network with offices across the world, we work seamlessly across jurisdictions, which is key in these types of disputes, and enables us to engage the best possible people locally to support us in each of the relevant jurisdictions.

3. The assets are held in complex structures

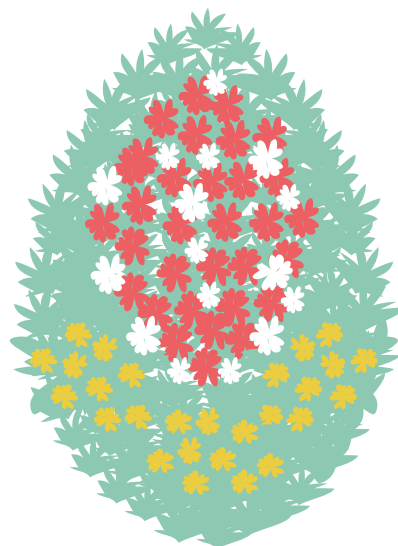
- Given more complex corporate structures are used to hold and manage family wealth, obtaining the information needed and gaining control of the relevant structures or of the deceased's interest in these structures, is often not straight forward. In situations such as this, we can be appointed as Receivers by the Court to take control of entities to ensure they are safeguarded as further reference below. Also, should it be required, we can appoint independent directors to a board, to enable investments/holdings to be managed/maintained.

4. There is ongoing litigation involving the deceased, either as a defendant or claimant

- In the deceased estate of the Russian oligarch Boris Berezovsky (the Estate), there were considerable assets to be secured and realised and ongoing litigation, where Berezovsky was the claimant, as well as substantial litigation as the defendant, which needed to be dealt with. The beneficiaries, along with the applicants and claimants of the litigation needed someone capable, to take control of the Estate and take the reins in relation to the ongoing litigation. Hence Kevin Hellard and Nicholas Wood of GT were appointed as Joint Receivers of the Estate. The Receivers had limited powers granted by the Court, which were to identify and secure assets and establish the Estates liabilities. The Receivers also had the power to deal with the ongoing litigation.
- The Receivers stayed in office for 12 months before one of remaining Executors came forward, a family member of Berezovsky. However, the Court felt that dealing with the Estate was too complex for them to deal with alone. Therefore, the Court appointed them as a 'Special' Administrator, so that they could deal with the grave and personal effects.
- The Court also appointed Messrs Hellard and Wood, as 'General' Administrators. The General Administrators had responsibility on behalf of the Estate for the legal proceedings and had powers to realise assets and also investigate the assets and liabilities within the Estate.

5. There are insolvency concerns

- Administering a contentious deceased estate, can be complex and legally complicated. So, if the estate is thought to be insolvent and the liabilities are thought to exceed the value of the assets, or there are concerns as to whether the estate may become insolvent, the process can be even more challenging.
 - Concerns with regard to the value of the estate can arise for a variety of reasons for example:
 - due to the assets within the estate having reduced in value, which is particularly pertinent given the COVID pandemic and the effect it has had on numerous industries worldwide
 - assets in the estate have been dissipated and can no longer be traced or recovered
 - the complex legal structures or jurisdictions in which assets are held, mean legal action is required to recover them and there are insufficient funds in the estate to pursue such claims
 - legal claims have been issued by the deceased or against the deceased, which need to be managed as the outcome is likely to effect the solvency position of the estate.



- The process followed by the executors once there are insolvency concerns is particularly important, given the personal liability which can be imposed once the estate is considered to be insolvent, if mistakes are made with administering the estate and the payment of liabilities. Hence, where insolvency is identified as a potential issue, the benefits of involving an Insolvency practitioner who has experience of dealing with deceased estates is tangible.

6. Issues have been identified with current executors or personal representatives

- We have been appointed to a deceased estate, where the executors have realised assets and misappropriated the sale proceeds and have transferred/sold assets for less than their true value for their own benefit. In addition, they have not provided the beneficiaries of the estate with a full account or an explanation as to what happened to these assets. In this situation, we have utilised funding from GT to obtain legal advice and counsels'

opinion on the potential claims available and we are currently agreeing a fee structure with our instructed solicitors, which will enable them to work on this matter on a contingent fee basis, should a full account not be provided and we need to proceed with pursuit of the legal claims accordingly.

7. Flexibility regarding fee and funding structures

- Having the ability to be flexible with regard to our fee structure and the availability of various funding options for us and the lawyers/counsel we instruct has real benefits for beneficiaries, especially in situations where there are not necessarily sufficient funds available to otherwise pursue such claims.

In each of these situations, utilising the skills of a professional independent administrator, who has experience with asset tracing and cross jurisdictional asset recovery skills, along with the ability and experience to manage cross border litigation and complex and often emotive disputes sensitively is key.

Having all of these skills within a professional independent administrator adds real financial benefits for the ultimate beneficiaries.

If you have any queries or concerns relating to a deceased estate, please do get in touch, as we would be happy to talk through with you and see if we can help your client.

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