THE MUCH TALKED ABOUT EU REGULATIONS ON SUCCESSION APPLICABLE IN 2015

450.000 cross-border successions occur in the EU every year estimated to be worth more than 120 billion euro.

These successions are characterised by their high complexity. Succession law varies considerably from one EU country to another.

The European Council have been discussing improving the status quo and on the 4th of July 2012 a new legislation was passed, colloquially known as the Brussels IV. The new European Union rules now known as EU 650/2012 regulations are applicable to successions to all member states (ECS state) as of August 17th 2015. The UK, Eire and Denmark have opted out suggesting incompatibility between the differing legal procedures.

The new regulation will be applicable to all assets in the EU. Mutual recognition of decisions relating to succession in the EU is ensured. Important to note that the regulation is binding and directly applicable in the Member States. This means that there is no need for legislation passed in a Member state. Spain for example will be subject to these EU regulations.

Regulation on jurisdiction, applicable law, recognition, enforcement of decisions to include enforcement of authentic instruments in matters of succession will include a creation of an ECS (European Certificate of Succession) ensuring that a given succession is treated under a single law and by one single authority.

Though not obligatory this can protect heirs in complex situations to avoid judicial and parallel conflicting decisions. This certificate enables a person to prove his rights as heir or his administrative powers as administrator of an estate or executer of a will with no further formalities.

Ref: 00/0072 Date: 27/10/14

Expats in Spain can and has been the case to date (this is where one may wonder why it takes 84 articles to explain such a simple regulation) have the choice to apply either the law of nationality or the law of habitual residence to their succession. The habitual residency choice leaves many inconsistencies as to whether your habitual residence is in the country of residence or the country you were most associated with at time of death. In the latter case the law of succession of that country will govern the succession. Interesting to note that those of multiple nationalities will be able to choose the law of any of these nationalities.

Take note that the EU regulations will not interfere in the national rules on succession such as taxes etc. It is important to note that the default position is that the law of the state in which the deceased was "habitually resident" applies to succession to assets. The State of habitual residence need not be and ECS state but what is known as a third state such as to give an example, the US.

Selection of the law of nationality should be made expressly in a will or analogous document. This will ensure that the law of nationality will be applied to assets in the ECS.

Complexities which may occur in Spain or France which may not recognise trusts and the devolution of assets, and that the regulations does not apply to lifetime gifts. For those concerned about these matters, should seek the advice of a lawyer with expertise on EU successions.

Note: No changes to the advice we have given to date about drafting separate wills for assets in different countries to avoid the delay and expense of probate.

What should I do now?

Although the Regulation came into force in 2012, the provisions will not apply until 17th August 2015. That said, Wills can be prepared and executed now, but do take note that up to that date the will you drawn up with your choice of succession of the country of birth or other will remain valid if death occurs before midnight of the 16th of August of 2015.

Important note: if a partner shows signs of any illness such as Alzheimer's or any other types of senility or dementia, a new will should be made immediately. Once diagnosed, they are not able to make a will and testament. Not saying some have not as the notary may not be aware of any of the signs. There would be concerns in these cases if the will was ever contested and medical records were available showing the commencement of the affliction.

The law does go on to say that 'A disposition of property upon death made prior to 17 August 2015 shall be admissible and valid in substantive terms and as regards form if it meets the conditions laid down in Chapter III or if it is admissible and valid in substantive terms and as regards form in application of the rules of private international law which were in force, at the time the disposition was made, in the State in which the deceased had his habitual residence or in any of the States whose nationality he possessed or in the Member State of the authority dealing with the succession'

For those who die intestate in Spain there will be a le renvoi to Spanish law.

By Myra Azzopardi Swainson

27/10/14

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