

Brussels IV

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Brussels IV: finally, a solution for the skiing chalet and the villa in St Tropez

Many private client professionals will be wearily familiar with the problems where their UK clients own property in continental Europe. 'Forced heirship' rules are imposed so a surviving spouse or civil partner cannot control the property; the property may pass to children of a former marriage despite the client's wishes; there may be inheritance tax on the death of the first spouse/civil partner; and the UK tax effects of an SCI, usufruct or other civil law concepts have to be considered.

From 17 August 2015, however, the European Succession Regulation (made 4 July 2012, no. 650/2012), better known as Brussels IV, comes into effect and means that nationals of any State – including non-EU States, and EU States such as the UK which have opted out of the Regulation – can make a choice in their will to apply their national law to assets in another EU state. UK nationals therefore can elect for UK law, so their properties on the Continent will pass on death without the application of forced heirship.

This would enable them to leave the whole property to a spouse or civil partner outright, and to the children on the second death only; and enable full UK IHT spouse exemption to apply.

Whilst the UK (and Denmark) have opted out of the Regulation, so that a choice of another national law will not affect English succession principles, the opt out does not prevent UK citizens from choosing UK law which will be binding in the countries that have opted in.

The choice of the law can be included in wills signed now, though it would only take effect for a death on or after 17 August this year. Withers is already assisting clients with amending their wills to make use of the Regulation.

The Regulation states that if there is no election, the law of 'habitual residence' applies. Even if this would be England, this cannot be relied on for land abroad, as English law would then provide that the local law applies; but the referral to the local law does not apply if an election for national law is made.

UK resident Italians – act now!


It has for some time been possible for Italian citizens resident in the UK to elect under Italian domestic law for the law of England, as the place of habitual residence, to apply, thus achieving (but not in all cases) the same effect as a Brussels IV election for their Italian property. Once Brussels IV takes effect however, it will no longer be possible to do this and, as Italian nationals, they will be unable to elect for UK law thereafter. There is therefore some urgency in getting wills done for such clients before the 17 August deadline if Italian forced heirship is to be avoided.


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