



## Succession Law Issues for Scandinavians

12 September 2013

### Succession Law Issues for Scandinavian & Other European Persons

---

Private Client Partners Alice Palmer and Frederick Bjørn summarise some of the issues and emphasise the importance of taking professional advice in this specialist area

---

Despite continuing attempts to harmonise the succession laws between the various European and European Economic Area countries, there remain important differences which can raise significant problems when dealing with the estates of European persons. Although Regulation 650/2012 (known as Brussels IV) was formally adopted by the European Parliament and Council in July 2012, its intention being to harmonise succession issues between the different European Union states, it does not come into force until August 2015 and in any event is not binding on the United Kingdom, Ireland and Denmark.

Take the example of Per, a Norwegian national living in London and owning property in Spain. On his death, which country's succession laws will govern the devolution of his Spanish property?

- As the property is in Spain, we need to start there but Spanish succession law says that it is the succession law of the country of Per's nationality that should govern the devolution of his estate.
- Norwegian law however says that it is the succession law of the country of Per's domicile that should govern the devolution of the estate. For Norwegian law purposes, Per's domicile is England (even though for English law purposes his domicile is Norway due to the different concept of domicile in the two countries).
- Although English law (like Norwegian law) says that it is the succession law of the country of Per's domicile that should govern the devolution of his estate (other than UK real property), English law comes up with a different answer to the question of which country's succession laws will govern the devolution of the Spanish property, because for English law purposes Per is domiciled in Norway not England.

The difficulties that this type of situation raise are clear, particularly when other European countries do not have testamentary freedom in the same way that England and Wales does, requiring a part of the estate to be left to spouses, children or other relatives. Unless these issues are addressed prior to death:

- there is a risk that the intended heirs will not in fact inherit because the succession laws

applicable in a particular country will override the provisions of any Will, so creating conflict within the family and depleting the value of the estate as a result of professional costs; and

- if the estate does not pass as intended, a higher level of inheritance tax or death duty might be payable, for example, if spouse exemption cannot be claimed because the applicable succession rules require the assets to be left to children.

By examining the issues during lifetime and establishing any potential problem areas, it may be possible to avoid any such issues by:

- restructuring so that assets situated in any problem jurisdictions are owned by an intermediate company established in a neutral jurisdiction
- examining and possibly changing the applicable matrimonial régime
- making appropriate provision in the Will to circumvent or contain any succession law rights
- entering into a form of testamentary pact with selected heirs
- establishing a trust in a jurisdiction whose courts do not admit claims by disappointed heirs
- using lifetime gifts, life insurance or pension provision to compensate people who may be prevented from inheriting to the full extent by the application of certain succession laws

The most important step is to ensure that there is a valid Will governing all the assets situated in different parts of the world. Otherwise, the estate (or part not governed by a Will) will devolve in accordance with the relevant intestacy laws. Where a person is a national of one country, a domiciliary of another and with assets in a third country, which country's intestacy rules will apply may be difficult to establish and in any event are unlikely to accord exactly with what the individual would have wanted.

As mentioned, trusts or settlements may be useful vehicles in this area. Although none of Norway, Denmark or Sweden has ratified the Hague Convention on the Recognition of Trusts, this may not in fact be a bar to Scandinavian nationals establishing a trust. We have experience of establishing trusts for Scandinavian clients and having them recognised for Scandinavian legal and tax purposes.

The question of which succession law applies to different parts of a cross border estate is quite separate from the question in which country Inheritance Tax may be payable and the answers to the two questions may well be different. By taking appropriate advice, the tax issues can also be addressed.

We have considerable experience of advising Scandinavian and other European based clients in connection with the structuring of their affairs and on UK tax and estate planning matters generally. We will happily work with the client's established advisors in their home country but, if there is no such advisor, have an informal network of lawyers with whom we have previously worked and whom we can consult on the client's behalf, as required, to produce a solution which works in both countries.

**13 September 2013**

---

For advice in this area and in the event that you do not have a usual contact at Payne Hicks Beach, please contact the author Frederick Bjørn by email.

---

**10 New Square, Lincoln's Inn, London WC2A 3QG**

DX 40 London/Chancery Lane  
Tel: 020 7465 4300 Fax: 020 7465 4400 [www.phb.co.uk](http://www.phb.co.uk)

This publication is not intended to provide a comprehensive statement of the law and does not constitute legal advice and should not be considered as such. It is intended to highlight some issues current at the date of its preparation. Specific advice should always be taken in order to take account of individual circumstances and no person reading this article is regarded as a client of this firm in respect of any of its contents.

The firm is authorised and regulated by the Solicitors Regulation Authority: SRA Number 00059098

© 2013 Payne Hicks Beach