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THE SUCCESSION SLALOM!

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AGENDA

- **Cross-border succession: traps and pitfalls**
- **What does Brussels IV mean in practice?: Madeleine Loughery-Grant**
- **The view from a participating EU Member State: Ferenc Ballegeer**
- **The view from a third country: John Wilson**
- **Practice points and estate planning tools**

CROSS-BORDER SUCCESSION

- Regulating how:
 - a person's property is dealt with on their death - including the mechanism for paying taxes and other creditors;
 - establishing who is entitled to inherit the deceased's property; and
 - how that property is to be transferred to those entitled to it
- Not always a case of applying the provisions of a will, as these may conflict with what is allowed under the relevant succession laws and, if applicable, a matrimonial property regime
- NB the 'modern' family and the 'step' family

CROSS BORDER SUCCESSION: TRAPS AND PITFALLS

The hazards:

- Misjudgement/Assumptions:
 - Underestimating the differences in the various succession systems across the globe
 - Some assume they carry their “personal” law around with them and that everything will necessarily pass on death in accordance with the laws of their residence or nationality
- Being overwhelmed:
 - Some feel so overwhelmed by the difficulty of it all that the individual does less planning than they should
 - Tendency to ignore the planning options
- Ignoring the cross-border aspects, e.g.:
 - Forced Heirship
 - Marital Property Regimes (particularly community of property)

THE PROBLEM OF INTERNATIONAL SUCCESSION

What governs succession?

- Different jurisdictions have different rules about succession
- Which set of rules will apply?
 - Location of the asset?
 - Habitual residence?
 - Domicile?
 - Nationality?
 - Something else entirely?
- Vocabulary varies between jurisdictions e.g. 'domicile'
- The horror of renvoi



TESTAMENTARY FREEDOM VS FORCED HEIRSHIP

Testamentary freedom: freedom to leave assets as you wish

- Applies to:
 - UK real estate
 - UK moveable assets of English domiciliaries
 - Typically: foreign moveable assets of English residents
- Scottish law is different to England/Wales
- NB matrimonial property regimes?

Forced Heirship: the various members of the family and their right to inherit

- The influence of matrimonial property regimes
 - Rights of the surviving spouse on intestacy
 - The dual protection of the surviving spouse
- Descendants
 - The impact of matrimonial property regimes
 - The right to inherit on intestacy
- More distant relatives
- Other family members

AIJA Seminar
Prague



Madeleina Loughrey-Grant
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FARRER & Co

Brussels IV

- EU Commission green paper
"a clear need for the adoption of harmonised rules"
- Into force on 16 August 2012
- Succession of persons who die on or after 17 August 2015
- Primary aim: harmonize the conflict of law rules of the EU member states to ensure that one law determines how an estate is dealt with
- UK and Ireland did not opt in to the regulation and Denmark not bound

Brussels IV

- Habitual residence will have jurisdiction and will apply the law of that state, unless:
 - deceased elects for Courts of Nationality to apply
 - deceased was manifesting more closely connected with another member state in which case the courts of that jurisdiction will apply
- European certificate of succession

"It is essential for heirs to be able to assert their rights and take possession of the property to which they succeed without having to go through further formalities. With harmonized conflict rules, it will be possible to establish a certificate having uniform effects throughout the Community. This would undeniably constitute value added."

Brussels IV

- Habitual residence is undefined in the regulation
 - Necessary to make an overall assessment of the circumstances of the life of the deceased
 - Taking account of all relevant factual elements
 - A close and stable connection with the state concerned
- Multiple nationalities?
- What about trusts?
- Public policy exception
- European certificate of succession
- Regulation v practical application

Your key contact



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The view from a participating EU Member State



Movement of HNWI

Harry, UK national (England), moves with his wife Pippa, UK national (England), to Belgium to work for the European Commission.

Harry and Pippa were married in England in 2005 and lived there before they moved to Belgium.

Harry intends to draft a will in order to disinherit his son Fred as much as possible as Fred has a severe problem.



Succession Regulation:

Habitual residence at the time of death determines the applicable inheritance law

Choice of law for English law is possible

Public policy exception (art. 35): under Belgian inheritance law Fred is entitled to receive $\frac{1}{2}$ of the estate...

Movement of HNWI

Philippe, Belgian national (Brussels Region), moves with his wife, Mathilda (Turkish national) to the Turkish Riviera. They lived for over 30 years in Belgium and have 4 children, all living in Belgium. His main assets are in Belgium.

Philippe dies of a heart failure one year later while on holiday at the Belgian coast.

There is no choice of law in a will.

What inheritance law applies?



Succession Regulation:

Habitual residence at the time of death determines the applicable inheritance law

No choice of law

Manifestly more closely connected?

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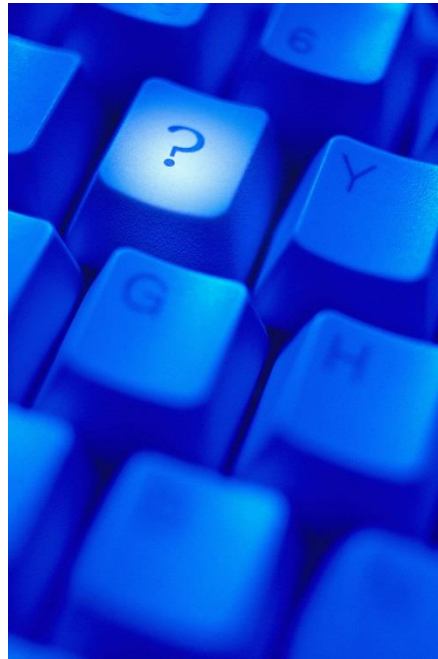
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The view from a third country



QUESTIONS?



FURTHER INFORMATION

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