

Briefing Note

Brussels IV

How Brussels IV affects the UK

From 17th August 2015, Brussels IV will be binding on EU Member States except for the UK, Ireland and Denmark.

The main reason why the UK has chosen not to opt in to Brussels IV is because it may oblige the UK to apply clawback provisions contained in the law of other member states. The government considers this would cause unacceptable uncertainty in relation to lifetime gifts (particularly gifts to charities and trusts) and land registration.

However, the UK will still feel the effects of Brussels IV.

Key provisions of Brussels IV

Brussels IV applies to both testate and intestate succession, with exclusions for certain matters such as tax.

- The default position is that the law of the country in which the deceased was habitually resident will apply to the deceased's estate. Accordingly, if your usual residence is in France, French succession law would apply to your entire estate, even if some of it was held in Spain or Italy, for example. The habitual residence need not be a Brussels IV state i.e. it could be Scotland.
- If the deceased was "manifestly more closely connected" to a jurisdiction other than the one in which they were habitually resident, then the law of that jurisdiction would apply.
- If, however, a person is living in a country other than that of his nationality, he may choose the law of his nationality to apply to all his estate in Brussels IV states. If he has more than one nationality, he can choose which of these he would like to apply. The selection must be made formally, in a Will or equivalent document. For example, a Scottish person living in France could elect that Scots law apply to his French estate. However, as the UK has not opted in to the Regulation, a French person in Scotland could not elect to apply French law to his Scottish estate.
- If a person is habitually resident in one country, and makes a Will under the law of the country of his nationality, this may be deemed to be a choice of law in favour of his nationality. Unfortunately however, this point is not yet certain.
- Authentic instruments and court settlements that are enforceable in one member state will also be enforced in other member states, subject to a public policy exception.
- A European Certificate of Succession can be used to confirm the status and rights of beneficiaries and personal representatives. These can be issued by Brussels IV states.

Brussels IV will not affect the application of existing international conventions to which the member states are party, except that it will take precedence over conventions established exclusively between member states.

Jurisdictions of State where assets are located

If the deceased was not habitually resident in any member state at death, the court of a member state in which assets of the estate are located has jurisdiction to rule on all succession matters if any of the following applies:

- The deceased was a national of that member state at death.
- The deceased had his previous habitual residence in that member state, provided that the change of habitual residence was not more than five years before an application was made to that court.
- If no court of a member state has jurisdiction, the court of a member state in which the assets are located has jurisdiction only to rule on the assets in that state.

States with more than one legal system

If Brussels IV refers to the law of a state has more than one legal system (e.g. UK), that state's internal conflict of law rules determine which law applies. For example, if the deceased elected to apply "British law" to his estate, the internal laws of Scotland and England & Wales would determine whether Scots law or English law would apply.

Renvoi

Renvoi is the process by which a court adopts the rules of a foreign jurisdiction with respect to any conflict of laws that arises. Brussels IV states first that where the applicable law is the law of a third state specified by Brussels IV, this includes that state's private international law insofar as those rules make a renvoi to (i) the law of a member state; or (ii) the law of another third state that would apply its own law.

However, Brussels IV then excludes renvoi with respect to the applicable law if it is a law already caught by Brussels IV (e.g. the law chosen by the deceased to apply to his estate). Consequently, renvoi is permitted only where the applicable law under Brussels IV is the law of a third state, not where it is the law of a member state. It is likely that the UK is treated as a third state for this purpose, but the point is uncertain.

Please note that this briefing note is intended as a short summary of Brussels IV. No responsibility can be accepted for any action taken in reliance on this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice.

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