



Suzanne Lauritzen Jourdan
Managing Director
Bonhôte Services SA
slauritzen@bonhote.ch
Tel. +41 32 722 18 42



The changes that new EU inheritance law provisions hold in store

It would seem obvious that an inheritance concerning a Swiss resident or a Swiss national should invariably be settled in accordance with Swiss law. In certain cases, however, a number of factors can lead to provisions of foreign law being applied instead. This can happen, for example, when a person living in Switzerland is a foreign national or owns property abroad. The result can be problematic but careful planning makes it possible to deal with these contingencies effectively.

International successions

According to European Union (EU) data, more than 450,000 successions span national boundaries every year, involving 13% of all marriages and 20% of relationships governed by the new law on registered partnerships.

This situation harbours potential conflicts over which national law will apply, which authorities will have jurisdiction and whether or not estate-related documents (e.g. letters of administration appointing heirs) will be deemed valid.

Regulation 650/12, or “Brussels IV”

With a view to avoiding these risks and harmonising international rules, the EU (with the exception of the UK, Denmark and Ireland) adopted a new set of provisions (“Regulation 650/12”) that came into force on 17 August 2015. Even the countries that did not sign this agreement (including Switzerland and the three aforementioned EU members) will also be affected by it in cases where their residents own property in the signatory countries.

Regulation 650/12 provides that a person's place of residence shall henceforth prevail in all matters of civil

law relating to inheritance. This will change the game for certain countries such as France, Portugal and Sweden, which until now have applied the law of the deceased's nationality and/or the law of the country where real property is located.

Under Swiss law, until now it was the law of the deceased's last country of domicile that applied. Under Regulation 650/12, however, it is the last “usual” place of residence that prevails. Thus, for an Italian citizen who moves from Italy to Switzerland and dies shortly thereafter, the usual country of residence will still be Italy.

Regulation 650/12 also offers the prerogative to choose the law of one's nationality as the sole proper law regarding inheritance. This makes it possible to plan the deferred distribution of property and, if necessary, change the allocation rules that would normally apply to the forced shares (“legitimes”) of an estate. British law, for instance, does not recognise forced shares and in other countries the percentages of forced shares are very different from those applied in Switzerland.

How to proceed

In view of the new rules, citizens of EU countries and/or persons who own property in a country that has adopted Regulation 650/12 should analyse their specific situation and think about amending their wills.

We also recommend considering the possibility of amending one's matrimonial property settlement, since the designation of property covered by a succession is determined by such settlements. At the same time, it is important to take account of tax aspects to ensure that one's estate will be handled efficiently from this standpoint as well.

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