Laws and locations

A look at forced heirship regimes and estate planning for investments in Europe

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ESTATE planning in an international context is seldom straightforward, especially when there may be family tensions. One of the most striking examples in recent years was the 2012 feud over the estate of British turkey tycoon Bernard Matthews. The dispute gave certain sections of the press a welcome opportunity to hone their literary skills ("Feathers Fly over Bernard Matthews' Turkey of a Will – Fowl Play Suspected", etc), but the serious issue was that Mr Matthews' intention to leave his French house to his long-standing partner, Odile, was thwarted by his adopted children's claim under French law to a 75 per cent share of the property.

Mr Matthews was British, but the same issues would have arisen had he been a Singapore citizen with property in France. French law says that you cannot disinherit your children and that you have to leave them a fixed share of your estate. Similar rules apply in most continental European jurisdictions.

The question for Mr Matthews' executors (representatives executing the will) was whether French law, with its "forced heirship" rules, applied to restrict Odile's inheritance. Until August 2015, where immovable assets (real estate) situated in France were concerned, it certainly did.

A relatively simple way of avoiding Mr Matthews' problem would have been for him to have held Villa Bolinha through a company (for instance a French SCI – Société Civile Immobilière) so that what passed under his will would have been the shares in the company rather than the property itself. This way the shares would have been classified as movables, French forced heirship provisions would have been avoided and the children would have found it much harder, if not impossible, to claim a share of the villa.

However, there would have been tax disadvantages, which is presumably why Mr Matthews (over-optimistically as it transpired) gave the children the benefit of the doubt that they wouldn't contest his wishes.

The short point is that anyone owning property in Europe needs to appreciate that local forced heirship rules may apply when they die, and also that there may well be issues in connection with the international effects of official documents issued in the course of the administration of the estate, such as grants of probate, certificates of inheritance and statutory declarations.

The good news (though not for Mr Matthews) is that had he survived until Aug 17, 2015, EU (European Union) Regulation 650/212, known as the "European Succession Regulation", would have had come into effect.

Since that date, residents in EU countries (with the exception of the UK, Denmark and Ireland) have been faced with a single set of rules which govern the jurisdiction and applicable law in succession law matters. The new rules look primarily to the deceased's place of habitual residence, but an individual may elect that his succession should be governed by the law of his nationality (whether or not he is a national of an EU member state). The new rules also introduced a European Certificate of Succession, aimed at facilitating the administration of cross-border estates.

The key point here for Singapore citizens is that anyone with a property in Europe (again, except for the UK, Denmark and Ireland) will be able to elect themselves out of the local forced heirship regime by specifying in their will that the law of their nationality should apply (at the same time it would be necessary to note whether or not the testator is a Muslim and whether the Administration of Muslim Law Act, Chapter 3 would apply to him).

If no election is made, then the EU country where the property is situated will apply the succession law of the deceased's habitual residence. If this is Singapore, this may not be helpful as Singapore private international law will refer back to the law of the country where the property is situated (and, under the terms of the Regulation, such a referral would be accepted by that country).

Testator's national law

However, where the testator has elected for the law of his nationality to apply, the Regulation explicitly rejects any such referral, so that Singapore law (without forced heirship) should be applied by the local court.

One note of warning, though: The French system of taxing French assets held in trust means that it will usually make sense to exclude French assets (or indeed assets in most European countries) from any will incorporating trust provisions, or from any "pour-over" will decanting the estate into a lifetime trust. It will also be important to clarify who should pay any tax payable in the country where the assets are situated.

In the Matthews case, the children argued that the French tax should be payable by the estate rather than by themselves. They lost, but the arguments were complex and expensive.

Cross-border estates are complicated and careful planning is vital to ensure that your estate goes to the people you want it to go to with the minimum of delay and opportunity for argument.

The European Succession Regulation should make things a little easier – though it will be interesting to see how continental European notaries cope with applying common law systems to the administration of European assets. Where there is an election for the testator's national law to apply, that election covers administrative matters as well as succession so that, in theory at least, the executors will be able to deal with the local formalities that up until now have been the preserve of the "heirs".

European notaries are unlikely to adopt the new rules with any degree of enthusiasm, and until there has been more experience of how the rules work in practice, and hopefully some guidance from decisions of the Court of Justice of the EU, there will be uncertainties and scope for disagreements. The aim of international estate planning is to identify with trusted advisers such uncertainties and keep them to a minimum. W

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