

# CHANGE IN THE LAW FOR CROSS BORDER SUCCESSIONS

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## The Law

The new regulations on cross-border succession came into force in August 2015. They should result in faster and cheaper procedures which will save time and legal fees.

Member States now have a year to align their national laws to ensure that the new EU rules are effective.

Under the new EU rules, there will be a single criteria to determine both the jurisdiction and the law applicable in cross-border cases i.e. the deceased's habitual place of residence or their nationality.

It also permits citizens to plan their succession in advance with full legal certainty. This means that people living abroad will have the option to ensure that the law of their country of nationality applies to the administration of their entire estates.

However, if the person dies without leaving a valid will or the equivalent, his or her succession will be dealt with in accordance with the law of the member state where he/she had their residence.

## Who does it affect?

The new law will be of particular interest to clients with assets, holiday homes, bank accounts and other investments in Spain.

If a British national dies leaving a valid will in Spain stating clearly that they want their inheritance to be governed by the laws of England and Wales, that request will prevail over any other law or rule.

Making this choice will ensure that the estates of British people with assets in Spain will be dealt with in accordance with the law of England and Wales (or Scotland if appropriate).

## What needs to be done?

As a result of this new regulation, it is important that clients with properties or assets in Spain (or in other European countries) have two separate wills, one dealing with their Spanish or European assets and the other with their British assets.

Their British nationality should be clearly stated in both wills as well as their wish that their inheritance be governed by the laws of their nationality i.e. the law of England and Wales or Scotland.



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Inserting such clauses will make it possible for a person to leave their assets to whom they choose on death. If that is not done and for example, a person dies leaving assets in Spain and they reside in Spain, Spanish Law will apply to their estate. Under Spanish law, assets must be distributed between certain relatives removing total freedom of choice.

People should also be aware that with regard to inheritance tax (IHT), they will be liable for IHT in Spain only on their Spanish Assets.

Because of this change in regulation and the general complexities of Spanish law, it is very important that expert advice is obtained.

### **Further Help**

If we can be of any help or you require further information about anything mentioned in this leaflet please contact Susana Diez or one of the team at Labrums now:

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We look forward to hearing from you.

*These guidance notes deal in general terms with a complex subject. While we believe the contents to be correct, they should not be regarded as sufficiently full, accurate or precise so as to apply to any particular situation. You must always seek legal advice concerning any situations referred to in this leaflet and Labrums or its author can accept no responsibility for any loss.*

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