

Introduction

The EU Succession Regulation came into force on 17 August 2015 for the estates of persons who die on or after that date. It has full effect throughout 25 Member States and limited effect in the United Kingdom. Ireland and Denmark who have not opted into the Regulation

Aim of the Regulation

The Regulation aims to harmonise the conflict of law rules on cross-border successions within the EU. It attempts to answer two important questions:

- **Which law governs a cross-border succession?**
- **Which court is competent to deal with a cross-border succession?**

The EU Succession Regulation (SR) simplified

The SR provides that the laws of the State in which the deceased was habitually resident when he or she died (which need not be a SR Zone State) will govern how the deceased's estate (moveable and immovable) devolves, unless:

- 1. The deceased specifically elects the law of their nationality in their will, even if the State of nationality is not a SR Zone State; or**
- 2. There is evidence that the deceased in fact had a closer connection with another State**

Article 22 SR – the national law option

A testator may choose as the law to govern his whole succession the law of the State whose nationality he possesses at the time of making the choice, or at the time of death. If he has several nationalities he can choose the law of any State of which he is a national. The choice is a choice of the substantive law, and does not include the PIL rules of that law, i.e. no *renvoi*

Does the EU Succession Regulation concern South Africa?

Yes; because the SR is of universal application, and therefore it will apply to:

- **A South African citizen habitually resident in a Member state**
- **A South African citizen resident in South Africa who has assets in a Member State**
- **A person who is habitually resident in a Member State who has assets in South Africa**