

## **EWP & Succession Planning**



### **International Tax Planning, (EWP), and Succession Planning- Part 1**

#### **Private Placement Life Insurance (PPLI) in Action**

#### **PPLI Benefits International Family Wealth Transfer–Part 1**

##### **Background**

Many countries, primarily in civil-law jurisdictions, require forced distribution of assets at death according to strict laws and regulations. This usually takes the form of percentage shares of assets that will be distributed to spouses, children, and other close relations of the deceased. A [\*\*\*PPLI policy\*\*\*](#) purchased outside the home country of the owner or policyholder is a method to mitigate these forced heirship rules.

The PPLI policy is a contract between the owner of the policy and the insurance company to pay the beneficiary of the policy the death benefit upon the death of the

insured under the contract. A typical beneficiary provision of a life insurance policy states:

“Unless an alternate payment plan, acceptable to us, is chosen, the proceeds payable at the insured’s death will be paid in a lump sum to the primary Beneficiary. If the primary Beneficiary dies before the insured, the proceeds will be paid to the contingent Beneficiary. If no Beneficiary survives the insured, the proceeds will be paid to your estate.”

Since a typical PPLI policy is executed outside the home country of the policy owner, the forced heirship laws do not apply, as the policy will be governed by the laws where the insurance company is domiciled.

*This element of Expanded Worldwide Planning* (EWP) provides a wealth holder an excellent method to enact an estate plan that conforms to his/her own wishes, and not be dictated by the forced heirship rules of his/her home country. To be successful this needs to be well-coordinated with all the aspects of a properly structured PPLI policy, as well as all the other elements of a wealth owner’s financial and legal planning.

Here is a list of countries where forced heirship laws exist today in a variety of forms:

- France
- Switzerland
- Germany
- Turkey
- Mexico
- Brazil
- Argentina
- Italy
- Spain
- Russia
- Japan
- Saudi Arabia
- Yemen
- Jordan
- Iran

### **A Brief History of Forced Heirship**

The notion of forced heirship originated with Germanic tribe tradition, which sought to protect the family's legacy and tradition. The deceased’s personal property was divided into thirds--the widow’s part, the children’s part, and a third part, which consisted of clothes, weapons, and farm animals.

Forced heirship is mostly prevalent amongst civil law jurisdictions and in Muslim

countries, but also occurs in other major countries such as the U.S.A. (in Louisiana) and Japan.

There is a substantial difference between civil law jurisdictions and common law jurisdictions. **Civil law** is rooted in Roman law, and has the functions of the legal system codified and compiled into a collection readily available for citizens to reference. This legal structure requires the judge to rely on the black letter meaning of the law and disregards individual interpretation.

**Common law**, however, has its rules and regulations administered by judges. This type of individual judicial administration and decision-making allows enforcement of the law to vary on a case-by-case basis rather than on the black letter meaning of the law. The tradition of forced heirship has historically provided a means for heirs to be guaranteed a share in a decedent's estate

Civil law jurisdiction laws are heavily based on the **German Code** (BGB) and the **Napoleonic Code**. Today, the civil law legal system has become the most widespread of all the legal systems globally. Continental Europe, as well as many former European colonies, has adopted and evolved their laws to abide by the civil law structure. This has led to a continued reliance on the notion of forced heirship

## **Civil Law vs. Common Law Examples of Conflict**

### **United States and Spain**

In general the domiciliary jurisdiction at the time of a testator's death controls movable property. But in this case (*Wyatt v. Fulrath*, 211 N.E.2d 637, N.Y. 1965) the New York court ruled that the expressed agreement by the couple that New York law was to apply to these assets that were moved to New York. The ruling was sufficient to allow New York jurisdiction and law to override Spanish law.

The law of Spain would have prevented either spouse from agreeing that community property goes entirely to the survivor on the death of either, which was their expressed agreement in New York. Under Spanish law, the surviving spouse would only receive half of the community property deposited in the joint New York bank accounts.

### **United States and France**

In a 2009 New York case (*Re Meyer* 876 NYS 2d 7, App Div 1st Dept 2009) the court made a distinction between a lifetime, *inter vivos*, transfer and a transfer at death by will or trust. At issue were gifts of property made during lifetime by a person who was allegedly a French domiciliary at the time she made the gifts.

The court ruled that the gifts were not subject to forced heirship claims because:

“The validity and effect of these transfers, as well as the capacity to affect

them, are governed by the law of the state where the property was situated at the time of the transfer.”

The Court went on to say that: “[w]e perceive no valid policy distinction that would allow a nonresident testator to avoid French heirship claims by involving New York law with respect to assets physically situated in New York...but not with regard to previous inter vivos transfers of assets physically situated [in New York].”

## **Conclusion**

International families can eliminate the vagaries of court decisions which hinge on details of the law like *inter vivos* transfers versus testamentary transfers by using a properly structured PPLI policy. This policy will secure their own estate planning wishes using a legally binding contract between the wealth owner and an insurance company with no need of court decisions in any jurisdiction.

The laws governing these PPLI contracts are written specifically to accommodate international wealthy families. These laws enhance not only succession planning, but provide excellent asset protection, privacy, and tax efficiency.

In our next article, Part 2, we will explore more cross border conflicts involving succession planning, and how PPLI can either mitigate or totally eliminate these conflicts. Your questions and comments are greatly appreciated.

**Contact Us today!**

by [Michael Malloy](#), CLU TEP RFC, @ [Advanced Financial Solutions, Inc](#)



