Succession

Франция

This factsheet was prepared in cooperation with the Council of the Notariats of the EU (CNUE).

1 How is the disposition of property upon death (will, joint will, agreement on succession) drawn up?

In a cross-border situation, a will is valid if it conforms to the law of the place where it was made.

Basic conditions in France

• The person making the will (testator) must be of sound mind (Article 901 of the Civil Code (*code civil*)).

• The testator must have legal capacity (Article 902 of the Civil Code).

• Special provisions apply for persons under legal protection: therefore, a minor under 16 years of age cannot make a will (Article 903 of the Civil Code) and adults under guardianship must be authorised by the court or family council (Article 476 of the Civil Code). Persons under protective supervision (*curatelle*) may make a will (Article 470 of the Civil Code) subject to the provisions of Article 901.

Formal requirements

In France, four types of will are recognised:

• Holographic wills: testators must entirely handwrite, date and sign these wills (Article 970 of the Civil Code).

• Notarised wills: these must be made before two notaries or one notary and two witnesses (Article 971 of the Civil Code). If the will is made before two notaries, it is dictated to them by the testator. The same applies if the will is made before only one notary. In both cases, the will is then read to the testator (Article 972 of the Civil Code). The will must be signed by the testator in the presence of the notary and two witnesses (Article 973 of the Civil Code) and must also be signed by the notary and witnesses (Article 974 of the Civil Code).

• Sealed wills: these are typed or handwritten by the testator or another person, signed by the testator and then presented closed and sealed before a notary in the presence of two witnesses (Article 976 of the Civil Code).

• International wills: these are presented by the testator to a notary and two witnesses, signed by them and then attached to a certificate drawn up by the notary by whom they will be kept (Washington Convention of 26 October 1973).

Testators may revoke their wills at any time in accordance with Article 895 of the Civil Code.

Agreements on succession

Agreements on succession are in principle prohibited (Article 722 of the Civil Code).

However, it has been accepted since January 2007 that prospective heirs (children) can waive in advance their right to bring an action regarding interference with their inheritance for the benefit of one or more persons who may or may not be heirs (brothers or sisters or their descendants). This involves the advance waiver of an action in abatement (Article 929 of the Civil Code). To be valid, this waiver must be recorded in an authentic deed executed before two notaries. The beneficiaries of the inheritance (see also question 3) must also be named in the agreement.

Furthermore, under the rules on inter vivos division including grandchildren (*donation-partage trans-générationnelle*), prospective heirs (children) can agree to their own descendants receiving all or part of their share instead of them (Article 10784 of the Civil Code).

2 Should the disposition be registered and if yes, how?

All wills, particularly holographic wills, may be registered by the notary in the Central Register of Wills (*Fichier central des dispositions de dernières volontés* – FCDDV). It is not the contents of the will that are registered, but only the civil status of the person concerned and details of the notary holding the will. The role of the FCDDV is therefore to direct the applicant to the notary holding the will and not to disclose its contents.

Anyone can consult the FCDDV, subject to presenting a death certificate or any other document proving the death of the person whose will is being sought. The applicant must then approach the notary who registered the will. The application is made online: https://www.adsn.notaires.fr/fcddvPublic/profileChoice.htm.

The notary can inform only heirs and legatees of the contents of the will, unless otherwise ordered by the presiding judge of the regional court (*tribunal de grande instance*).

3 Are there restrictions on the freedom to dispose of property upon death (e.g. reserved share)?

Under French law, only descendants of the deceased (children, grandchildren, etc., in order of priority) and the spouse of the deceased where there are no descendants are entitled to a reserved portion (forced heirship).

Ascendants and collateral relatives have no right to a reserved portion.

Such rights to a reserved portion, which restrict the freedom to dispose of the estate at will and can vary in value depending on the number of children of the deceased or the status of the forced heir (child or spouse), may not exceed three-quarters of the estate. Forced heirs cannot waive their reserved portion (unless they waive succession). However, they can waive in advance the right to bring an action in abatement against excessive testamentary gifts (the advance waiver of an action in abatement referred to in question 1 in relation to agreements on succession).

Those heirs can therefore assert their right to a reserved portion (Articles 721 and 912 of the Civil Code).

• Reserved portion for children: this is half if the deceased leaves only one child on death, two-thirds if the deceased leaves two children and three-quarters if the deceased leaves three or more children (Article 913 of the Civil Code).
• Reserved portion for a surviving spouse: this is one-quarter of the assets in the estate (Article 9141 of the Civil Code). It applies only if there are no descendants or ascendants and only for estates opened since 1 July 2002.
Procedure for asserting a right to a reserved portion
An action in abatement allows heirs to assert their right to the reserved portion. Therefore, if a direct or indirect gift interferes with the reserved portion of one or more heirs, the gift may be deducted from the disposable (non-reserved) part of the estate (Article 920 of the Civil Code).
This action can be brought only by forced heirs within five years of the opening of the estate or two years from the date of discovery of the interference (Article 921 of the Civil Code).
Any adult forced heir can waive in advance their right to bring an action in abatement (Article 929 of the Civil Code). This waiver must be recorded in an authentic deed executed before two notaries. It must be signed separately by each of the parties waiving their rights, in the presence of the notaries alone. It must detail its future legal consequences for each of those parties.

4 In the absence of a disposition of property upon death, who inherits and how much?

Where there is no will, the order of succession is as follows under French law:
• If the deceased has no spouse and leaves children, the estate passes to the descendants in equal shares (Articles 734 and 735 of the Civil Code).
• If the deceased is single and has no children, the estate passes to the parents of the deceased, his/her brothers and sisters and the latter's descendants (Article 738 of the Civil Code).
If the deceased does not leave any brothers or sisters or any of their descendants, his/her mother and father inherit, each receiving half the estate (Article 736 of the Civil Code).
If the mother and father have predeceased the deceased, the brothers and sisters of the deceased or their descendants inherit, excluding any other parents, ascendants or collateral relatives (Article 737 of the Civil Code).
• If the deceased leaves a spouse, the matrimonial property rights must be settled before settlement of the estate proper. After settlement of rights arising out of the matrimonial property regime, the following rules apply:
• If the deceased leaves a spouse and children, the spouse may choose between usufruct (right to enjoy the use and benefits) of all existing assets, or full ownership of one-quarter of the assets where all the children were born to the two spouses and full ownership of one-quarter where one or more children were not born to the two spouses (Article 757 of the Civil Code). The spouse will be deemed to have opted for usufruct if he/she dies without having made a choice.
• If the deceased leaves a spouse and ascendants, half of the estate passes to the spouse, onequarter to the father and one-quarter to the mother. If one of the ascendants has predeceased the deceased, their quarter passes to the spouse (Article 7571 of the Civil Code).
• If there are no ascendants or descendants, the entire estate passes to the surviving spouse (Article 7572 of the Civil Code). Notwithstanding Article 7572 of the Civil Code, if there are no ascendants, the brothers and sisters of the deceased or their descendants receive half the assets in kind included in the estate, which are assets received by the deceased from his/her ascendants through succession or gift. This is the right of reversion (Article 7573 of the Civil Code). All other assets pass to the surviving spouse.
Partners in a registered partnership
The surviving partner in a registered partnership does not have a legal right to inherit. He/she can, however, receive a legacy.
A registered partner is not therefore regarded as the deceased's heir. Registered partners have only a temporary and gratuitous right of one year to use and enjoy the family home (and its furniture) after the death of their partner, provided that this was their main home in which they were actually living at the time of the death, pursuant to Article 5156 of the Civil Code. They therefore inherit only if they have been named as an heir in a will.
Where there are children, whether or not they were born to the couple, only the disposable (non-reserved) portion can be bequeathed to the surviving partner. The disposable portion of the estate varies according to the number of children: one-third of the estate if there are two children, one-quarter if there are three children or more (see information above).
Where there are no children, the entire estate can be left to the surviving partner or a third party as there are no forced heirs. However, if the parents of the deceased are still alive, they can apply to recover assets that they have given their predeceased child, up to onequarter of the estate for each living parent (Article 7382 of the Civil Code).

5 What type of authority is competent:

5.1 in matters of succession?

In France, matters of succession are dealt with by notaries. Their involvement is mandatory if the estate includes immovable property. It is optional if there is no immovable property.
The notary draws up the order of succession in a statutory declaration (*acte de notoriété*) and immovable property certificates recording the transfer of immovable property after the death. He/she assists the heirs with their tax obligations (drawing up and filing the declaration of succession within the required time limit and payment of inheritance tax). If the composition of the assets permits this, and depending on the number of heirs and their wishes, he/she arranges the division of the assets between the heirs, preparing a deed of division (*acte de partage*).
In the event of a dispute, the regional court in the place where the estate is opened has exclusive subject-matter and territorial jurisdiction.

5.2 to receive a declaration of waiver or acceptance of the succession?

The registry of the regional court in the place where the estate is opened receives declarations of waiver or acceptance up to the value of the net assets in the estate.
No special formalities are required if the succession is accepted unconditionally.

5.3 to receive a declaration of waiver or acceptance of the legacy?

The registry of the regional court in the place where the estate is opened receives waivers of universal legacies and legacies by general title. Under French law, no declaration is required for waivers of individual legacies.

5.4 to receive a declaration of waiver and acceptance of a reserved share?

The right to accept or waive a succession is indivisible. It covers the entire inheritance and cannot therefore be limited to the reserved portion.
It is, however, possible for heirs to waive requesting the abatement of testamentary gifts that interfere with their reserved portion.

6 Short description of the procedure to settle a succession under national law, including the winding-up of the estate and sharing out of the assets (this includes information whether the succession procedure is initiated by a court or other competent authority on its own motion)

Succession is initiated upon death, at the last place of residence of the deceased.
Following the death, the heirs have three options: to accept the succession unconditionally, to accept the succession up to the value of the net assets or to waive the succession.

Unconditional acceptance may be express or tacit (Article 782 of the Civil Code). It is tacit when heirs take action that necessarily implies their intention to accept the succession and that they would only be entitled to take in their capacity as accepting heirs (Article 783 of the Civil Code).
Acceptance of the succession up to the value of the net assets requires a declaration to the registry of the regional court in whose jurisdiction the estate is opened (Articles 787 and 788 of the Civil Code). The declaration is accompanied or followed by an inventory of the estate within a maximum of two months. The inventory must be drawn up by a notary, auctioneer or court officer (Article 789 of the Civil Code). If no inventory is submitted, the succession will be deemed to have been unconditionally accepted (Article 790 of the Civil Code). The inventory must cover all the assets and liabilities included in the estate.
Acceptance of the succession up to the value of the net assets enables heirs to ensure that their personal property is not confused with that of the estate, to retain, vis-à-vis the estate, all the rights that they previously held over the deceased's property, and to be liable for the debts of the estate only up to the value of the property that they have received. Heirs will therefore be liable for any liabilities, but only up to the value of the property that they receive in the succession.
Waiver of the succession is never assumed and must be express. In order to be enforceable against third parties, it must be sent to or filed with the court within whose jurisdiction the estate is opened (Article 804 of the Civil Code). Heirs who waive a succession are deemed never to have been heirs.
The time limit for exercising the right to accept or waive a succession is 10 years, after which the heir is deemed to have waived the succession. However, an heir can be ordered to decide (Article 771 of the Civil Code) and in this case must respond within two months. After this period of reflection, if an heir has not made a decision, he/she is deemed to have accepted the succession unconditionally.
The principle in French law is to settle estates amicably, without involving the courts. The courts can only be asked to intervene if there is disagreement between the heirs.
Most estates are settled amicably with the help of a notary. However, it is possible to settle an estate without using a notary in certain circumstances, particularly where the deceased's estate does not include immovable property. Where the heirs do use a notary, they can choose whichever notary they wish. If they cannot agree on the choice of notary, each can use their own notary if they wish.
Once the notary has been chosen, the next step is to determine the composition of the deceased's assets, taking into account his/her matrimonial property regime, any previous gifts, etc. To establish the contents of the estate to be taken into account, the notary will contact various organisations (insurance companies, banks, etc.) and ask the heirs to arrange for a valuation of immovable property or other assets not listed on a stock exchange. An inventory of movable property may also be necessary. The liabilities will be determined by listing the deceased's debts, whether these are simple invoices, taxes due, recoverable benefits, guarantees or compensatory payments to an ex-spouse.
Following the death, the heirs become joint owners of all the assets in the estate until the property is divided. As co-owners, they are also responsible for the liabilities in the same proportions. The sale of jointly owned property (known as disposal) must be unanimously agreed. By contrast, administrative decisions may be taken by a majority of at least twothirds of the joint rights. In addition, any co-owner may take the necessary steps to retain jointly owned property. In the event of a deadlock, the matter may be referred to the courts in order to override the need for authorisation from some of the co-owners.
The division of the property in the estate between the heirs ends this joint ownership. This division is carried out amicably if the beneficiaries are in agreement (the general principle, Article 835 of the Civil Code) or after legal proceedings in the event of disagreement, with the involvement of a notary (the exception, Article 840 of the Civil Code). Furthermore, the division may be total or partial if certain assets continue to be jointly owned (usufruct property, for example). Any heir can request the division of the property (Article 815 of the Civil Code). The creditor of a co-owner can also seek this division (Article 81517 of the Civil Code).
This final stage in the settlement of the estate requires the transfer of property to the heirs to be recorded. As a result, certificates of ownership are needed as proof that the heirs are the new owners of the property, whether this consists of immovable property, shares in partnerships (*sociétés civiles*), vehicles or securities. In the case of immovable property, the heirs must have the certificates of ownership registered with the land registry. The same applies to shares in partnerships, in which case the certificates have to be registered with the registry of the commercial and companies court (*tribunal du commerce et des sociétés*).
If the property is not divided, the heirs remain co-owners.

7 How and when does one become an heir or legatee?

Under French law, upon the death of a person, the succession process is initiated and the heirs designated by law automatically become co-owners of the property in the estate. These heirs have an automatic right to the property, rights and actions of the deceased (Articles 720 and 724 of the Civil code), which in principle allows them to immediately take physical possession of the assets in the estate. However, they must still decide whether to accept the succession unconditionally, accept the succession up to the value of the net assets or waive the succession (see the explanation in question 6).
Universal legatees and donees have this right only if there are no forced heirs (Article 1006 of the Civil Code). If there are forced heirs, they must be asked to deliver the legacy (Article 1004 of the Civil Code).
Legatees by general title and individual legatees must contact the heirs who have the automatic right (Articles 1011 and 1014 of the Civil Code). It is through them that they will obtain their legacy.
The State (cases of escheat) must be put in possession of the estate. The State is then represented by the state property office (*Administration des domaines*).

8 Are the heirs liable for the deceased's debts and, if yes, under which conditions?

Universal heirs or heirs by general title who accept the succession unconditionally are liable indefinitely for the debts and charges on the estate. They are liable for legacies of sums of money only up to the value of the estate assets net of debts (Article 785 of the Civil Code).
Where there are several heirs, each is personally liable for the debts and charges on the estate in respect of their portion of the estate (Article 873 of the Civil Code).
Heirs who have opted for unconditional acceptance have unlimited liability for all the deceased's debts and charges. However, they can apply to be released from all or part of their obligation for a debt on the estate if, at the time of succession, they may have been unaware of the existence of that liability and payment of these debts could seriously prejudice their own assets.
• If they have opted for acceptance up to the value of the net assets, heirs are liable for debts on the estate only up to the value of the property that they have received.
• Heirs who have waived a succession are not liable for the debts.

9 What are the documents and/or information usually required for the purposes of registration of immovable property?

Under Article 7101 of the Civil Code, only authentic deeds executed by a notary practising in France, court decisions, and official documents issued by an administrative authority can be used for land registration formalities.
Where an immovable property is included in an estate, the notary must draw up a notarial certificate or 'immovable property certificate'. This authentic deed records the transfer of ownership of the immovable property to the heirs. It must be registered with the land registry (*service de publicité foncière*). The value of the property must be declared by the heirs and indicated in the deed. It must correspond to the market price.

9.1 Is the appointment of an administrator mandatory or mandatory upon request? If it is mandatory or mandatory upon request, what are the steps to be taken?

The involvement of an administrator is not provided for or required by French law. However, it is possible if one is appointed by the court. It is the responsibility of the heirs to supply information to the land registries, assisted by the notary. The deceased may appoint an executor, whose powers are defined in Article 1025 et seq. of the Civil Code.

9.2 Who is entitled to execute the disposition upon death of the deceased and/or to administrate the estate?

It is the responsibility of the heirs to effect disposition and administer the estate. In the event of a dispute, the regional court in the place where the estate is opened has jurisdiction.

The court can appoint an administrator for the estate to represent all the heirs within the limits of the powers conferred on him/her (Article 8131 of the Civil Code).

Other types of authority are also available under French law for administering an estate, in particular posthumous power of attorney (Article 812 of the Civil Code) whereby the testator appoints an administrator to administer or manage all or part of the estate for the heirs. The other options are agency by agreement (Article 813 of the Civil Code), which is subject to the rules of ordinary law, and lastly authority conferred by the court, as mentioned earlier.

9.3 What powers does an administrator have?

Heirs with an automatic right to the property, rights and actions of the deceased have full powers. In the event of a problem or deadlock, the matter may be referred to the courts and an administrator may be appointed. In that case, the administrator is responsible for provisionally organising the succession where there has been inaction, default or error by one or more heirs to the estate. In this role, the administrator acts to preserve, supervise and administer the estate (Article 8134). Within the limits of the powers conferred on him/her, the administrator also represents all the heirs in civil and judicial matters (Article 8135 of the Civil Code).

10 Which documents are typically issued under national law in the course of or at the end of succession proceedings proving the status and rights of the beneficiaries? Do they have specific evidentiary effects?

Under French law, the statutory declaration (*acte de notoriété*) is the document normally drawn up by a notary to prove status as an heir (Article 7301 of the Civil Code), although such status may be proved by any means. The statutory declaration is an official document that identifies the heirs and their shares in the estate. For that reason, the deceased's relatives must provide the notary with documents identifying the members of the family involved in the succession (family record book (*livret de famille*), marriage contract, divorce judgment, etc.). The statutory declaration is regarded as authoritative unless otherwise proven. It can be replaced by a simple succession certificate signed by the heirs for small estates.

Where necessary, an instrument recording the choice made with regard to a succession (*acte d'option successorale*) and an immovable property certificate can be drawn up by the notary.

The succession ends with the division of the property, which is often recorded in a deed of division (*acte de partage notarié*).