Succession

Španělsko

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?

With regard to inheritance law, Spain has seven different legal systems.

The Autonomous Communities of Aragon, Catalonia, the Balearic Islands, Navarre, Euzkadi and Galicia each have their own inheritance legislation. In other parts of Spain, the rules laid down in the Civil Code apply.

The deceased's last place of residence shall dictate which body of inheritance law is to be applied. For Spanish citizens, the criterion of regional citizenship applies, in accordance with the rules on citizenship laid down in the Civil Code.

Under common civil law, the will is the title of inheritance, given that, as a general rule, inheritance agreements or joint wills are not accepted. A will may be:

open, i.e. it is drawn up before a notary, who drafts it and adds it to their notarial records. This is the usual way of making a will;

closed, i.e. it is drawn up before a notary without the notary being aware of its content. This form is no longer in use;

holographic, i.e. it is handwritten, signed and dated by the testator. This form is not common.

Spain's common civil law can be consulted on the website (here) of the Official State Gazette (*Boletín Oficial del Estado*). You can find an English translation of this text on:

Local or special laws have their own rules on wills in each of the territorial jurisdictions in which they apply, with different and specific types recognised in each of them. Some accept joint wills and inheritance agreements.

You can find the text of each specific regulation for local or special laws on the following link:

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

Wills made before a notary must be registered by the notary in the General Register of Wills (*Registro General de Actos de Última Voluntad*) kept by the Ministry of Justice. If there is a will, this register will indicate the date of the most recent will, any previous wills and the official notarial records in which the said will was listed. Notarial professional bodies (*Colegios Notariales*) can provide up-to-date information on the notary or the archive where the will may be found if the authorising notary is no longer practising (Link to Notaries of Europe).

This register is not public and is accessible only to persons who prove that they have a legitimate interest in the inheritance once the testator has died. It is also accessible during the testator's lifetime, to the testator, his or her special representative or by court order in the event of incapacity.

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

Spanish common law reserves for certain relatives a portion of the estate, or rather the assets it entails, in the form of a reserved share after including the value of the voluntary dispositions made by the testator, including *inter vivos*, and after deducting any debts. According to the Civil Code, the 'reserved share is the portion of the estate that the testator cannot distribute as this portion is reserved by law to certain heirs, referred to as "legal heirs".'

Legal heirs are:

children and descendants, with respect to their parents and ascendants;

In the absence of the above, parents and ascendants, with respect to their children and descendants;

the widow or widower in the manner provided for by law.

The reserved share of children and descendants consists of two thirds of their parents' estate. However, they may distribute one of the two thirds forming the reserved share in order to improve the inheritance of their children or descendants. The remaining third is freely distributable. It is characterised by conferring a right over the entire estate since, with a few exceptions, it is in general *pars bonorum*.

The ascendants' reserved share consists of half the estate, unless the spouse also holds a share, in which case the reserved share consists of one third.

The reserved share allocated to spouses not legally separated consists of the usufruct of two thirds of the assets of the estate in the absence of ascendants and descendants. However, if there are descendants, it consists of the usufruct of one of the two thirds due to the descendants. If there are only ascendants, it consists of the usufruct of half, which the heirs may settle in cash.

The respective legislation on civil law contains specific provisions on who is legally entitled to inherit, with each of these bodies of legislation having to be applied to establish the facts in each specific case administered in each of these territories.

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

It should once more be recalled that Spain has seven legal systems for inheritance matters. In common civil law, if there are no heirs entitled under a will, the law distributes the estate in the following order of priority: 1. Descendants; 2. Ascendants (in both cases with the spouse holding a right of usufruct over one third or one half of the estate, respectively); 3. Spouses not legally separated; 4. Fourth-degree relatives (first cousins); 5. The State.

The Civil Law of Aragon, Catalonia, the Balearic Islands, Navarre, Euzkadi and Galicia each contain specific provisions on this matter. In addition to the possibility of inheritance by relatives, the local laws recognise the possibility of inheritance by the testator's autonomous community of residence, and even by a specific institution, in the form and under the terms laid down in the rules governing this matter.

5 What type of authority is competent:

5.1 in matters of succession?

In the absence of disposition of property upon death, notaries have the authority to determine the parties entitled to inherit the estate by law (declaration of heirs).

If any of the parties concerned dispute the status of the heirs, the assets composing the inheritance or the division of the inheritance, the dispute will be settled by the courts in the corresponding legal proceedings.

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

As a general rule, a declaration of acceptance or waiver of the inheritance is made before a notary. Although explicit acceptance can also be given in a private document, where an award of property is involved, or for evidentiary purposes, a public notarial document is required. This is without prejudice to the possible intervention of a Spanish consul or diplomatic official authorised to perform notarial functions.
Acceptance may also be implicit (given through instruments that necessarily imply a willingness to accept, or that only persons with the status of heir are entitled to enact).
Any person who can establish that he/she has interest in the heir accepting or waiving the inheritance may instruct the notary to inform the heir that he/she has 30 calendar days to accept or waive the inheritance.
If the heir waives the inheritance to the detriment of his/her creditors, the creditors may petition the judge to authorise them to accept it on behalf of the heir in order to cover the amount owed.
Partial or conditional acceptance is not permitted. The heir may, however, accept the inheritance and not the legacy, or vice versa.

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

The same authority as for the inheritance, as described in the section above.
However, as an exception to the prohibition on partial acceptance, if there are various legacies not requiring payment of consideration in order to receive them (or if all of the legacies require such consideration), a legatee may accept them individually. What a legatee is not permitted to do is waive the debts and accept the assets.

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

The reserved share itself cannot be waived or accepted; rather, it is received by way of bequest or grant of probate, except in the case of legal action to determine the payment of an amount or property to be charged to the estate.
The Civil Code permits a legatee to renounce the inheritance in favour of the improved inheritance (which is one of the two thirds of the reserved share of the descendants).

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)

If there is a will and the testator has named an executor, the latter will have the authority to pay out the funeral expenses and any legacies, keep the property in good repair, defend the validity of the will and ensure its enforcement.
If a partitioner (*contador-partidor*) is appointed, this person will be responsible for apportioning the inheritance. The partitioner may be appointed by the testator, by the heirs by mutual agreement, by the court registrar (*letrado de la Administración de Justicia*) or by the notary on the instruction of heirs and legatees representing 50% of the assets of the estate.
In the absence of a partitioner or in the case of division by the testator, the heirs may distribute the estate between themselves as they deem fit.
In practice, in both cases the division of the inheritance and the award of the property is performed before a notary for evidentiary purposes and for the registration of the rights.
When a partitioner has not been appointed and an heir requests it, division can be performed by the courts. The courts appoint an expert to value the property and a partitioner to apportion the inheritance. Also, if requested, the appointment of an administrator and the taking of an inventory of the assets by the courts may also be agreed upon beforehand. The divisions made by the partitioner (with any amendments the judge may make if an heir opposes them) are entered in the notarial records.

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

Those persons entitled to an inheritance or legacy by law or by disposition of property upon death (*mortis causa*) become heirs or legatees upon acceptance of the inheritance or legacy (see Section 5.2). The effects of acceptance apply retroactively from the date of the testator's death.

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

In the case of outright acceptance or acceptance not under benefit of inventory, the heir will be responsible for all the liabilities of the inheritance, payment of which could involve not only the inherited property but also the heir's own property.
In the case of the inheritance being accepted under benefit of inventory, the heir is obliged to pay the debts and other liabilities of the inheritance only to the extent of the estate's assets.

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

Having the status of heir or legatee does not generally result in the entry in the Property Register (*Registro de la Propiedad*) of the right to specific immovable property because that status does not confer a right *in rem* to specific property. At most, it may result in a provisional entry. Heirs have a proportional right to the entire estate. Legatees have a personal right to demand that the heirs transfer any property bequeathed to them. Effective transfer of rights requires the acceptance of the inheritance or legacy and the award of specific property. Only in certain cases (such as that of sole heir, sole property, or legatee authorised to take sole possession) is it possible to waive the division and award of the estate.
In order to register the immovable property, either a public deed of acceptance of the inheritance and of the award of the property (drawn up before a notary) or a court decision is required. This deed must include, or be accompanied by as supplementary documents, the title of inheritance (will, declaration of heirs, agreement where so permitted), the full death certificate and the certificate issued by the General Register of Wills. Payment of the taxes on the transfer of property by inheritance is also required.

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 appointment of an administrator (*administrador*) is not required under Spanish law; however, such appointment may be agreed upon in the process of division of the inheritance, under certain circumstances.

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

If an executor (*albacea*) has been named in the will (under common law), he or she will administer the estate (see Section 6).
The testator may also appoint, in the will, a partitioner for the estate who will appraise the property and divide the assets.
In general, three persons — executor, partitioner and administrator — may be appointed, all of whom have administrative powers that may be altered by the testator or by the judge and, in some cases, by the heirs themselves.

9.3 What powers does an administrator have?

The main duties of the administrator of the estate are as follows:
representation of the estate,
periodic presentation of accounts,
conservation of the state of repair of the property of the estate and any other management acts that may be deemed necessary.

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?

The intestate declaration of heirs is a notarial instrument that proves the status of the legal heirs and their corresponding share.
The public deed of acceptance and partition (and of transfer of legacies, where relevant) drawn up before a notary and by agreement between the parties concerned assigns ownership of specific assets of the estate.
If the inheritance is brought before a court, the decision handed down granting the partition (and resolving, where applicable, any disputes) will constitute sufficient title and must be formalised before a notary as provided for by law.

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