Succession

Luxembourg

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

When drawing up wills, the rules to be complied with include the following:
Firstly, the testator must be of sound mind. Persons declared to lack legal capacity cannot make a will. In the case of minors specific rules apply. These are mainly designed to protect the assets of the persons concerned.
Some wills, such as joint wills, are prohibited. So too are agreements as to succession.
The Civil Code lists the following forms of will provided for by the Luxembourg law of succession:
holographic will;
notarially recorded will;
sealed will.
Procedures and arrangements vary depending on the type of will chosen.

Holographic wills

A holographic will is a will entirely written, dated and signed by the testator in person.
Holographic wills have the advantage of simplicity. Their disadvantage is that they may be drawn up by the testator without anyone being informed that the will exists. As a result the will might not be found after the testator's death.
There is also a risk of falsification or destruction. Furthermore a holographic will might not be valid if it is illegible, ambiguous or incomplete. It should be noted in that connection that even an incorrect date on a holographic will could make it null and void. It might also be invalidated by a material defect.
It is therefore in the testator's best interests to make known the existence of the will and the place where it is stored and to ensure that the will is valid.
The testator can ensure that the existence of the holographic will is known by telling a person they trust, or, on payment of a fee, they may have the main information on the will (such as name and address of testator and place where will has been lodged) entered in the central register of wills. The register is a database maintained by the Land Registry and Estates Department (*Administration de l'Enregistrement et des Domaines*) (also see below).
As regards the validity of the will, it must have been written entirely in the testator's own handwriting and must be dated and signed by the testator. In view of the above, use of an expert in the law of succession, such as a notary, is recommended in order to ensure that the will is valid.

Notarially recorded will

A notarially recorded will is received by two notaries or one notary assisted by two witnesses.
It has considerable advantages compared with a holographic will.
Firstly, the notary drawing up the document provides the testator with legal advice. That ensures that there is no procedural or material defect in the testator's last will and that the will is valid.
Secondly, since a notarially recorded will is lodged with a notary, it will remain sealed until the testator's death and his last wishes will nonetheless be found after his death. It should also be noted in that connection that it is the responsibility of the notary drawing up the will to have the key details of the will he has drawn up entered in the register of wills.

Sealed will

A sealed will is a document written by the testator or another person and presented to a notary by the testator closed and sealed, in the presence of two witnesses or a second notary. The notary receiving the sealed will draws up an endorsement in the shape of an act in public or private form (*acte de suscription en minute ou en brevet*).
The notary stores the sealed will, preventing any risk of substitution or falsification.
With a sealed will, like a notarially recorded will, it is possible to keep the arrangements made by the testator sealed during his lifetime. Also, since the will is lodged with a notary it will be found after the testator's death.
The fact that the notary draws up an endorsement when he receives the will does not mean that the will lodged is valid. In fact, even if the sealed will has been drawn up and lodged in accordance with the relevant procedural rules, it might nevertheless be rendered invalid by the material defect. The notary is unable to ensure that the will is valid, since it is presented to him closed and sealed.
The sealed will form is rarely used in Luxembourg.

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

In Luxembourg, the key details of some wills must or may be entered in the register of wills (see also answer to the previous question). Registration is compulsory for notarially recorded wills and for sealed and holographic wills lodged with a notary. That also applies if such wills are cancelled, revoked or amended in any other way. Registration is optional for holographic wills held by individuals.
The will itself and its contents are not kept on the register. The registration only shows the testator's first name and the surname and name of the spouse if applicable, the testator's date and place of birth, identity number, occupation, address or place of residence, type and date of document to be registered, the name and address of the notary who drew up the document or with whom it is lodged or, in the case of holographic wills, if necessary the name and address of any other person or institution entrusted with the will or the place where it is stored.

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

Under the Luxembourg law of succession there are restrictions on the freedom to dispose of one's property on death.
More specifically, the reserved portion prevents a person disinheriting certain legal heirs by means of a gift or testamentary arrangement.
In Luxembourg law, only the descendants of the deceased (children, or their children if they have already predeceased him at the time of his death) are entitled to the reserved portion.
The reserved portion is half the legal assets of the estate if the deceased leaves one child, two thirds if he leaves two children and three quarters if he leaves three children or more.
The reserved portion may be waived. Waiver must be made explicitly in the form of a declaration to the court registry at the place where the succession is opened, entered in a special register kept for that purpose.

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

If there is no will, the succession is governed by the applicable rules of law.

The order of succession is usually as follows:

descendants (children, grandchildren) ;

surviving spouse;

father and mother, together with brothers and sisters of the deceased and descendants of the latter;

ascendants other than the father and mother (grandparents, great grandparents, etc.);

collateral relatives other than brothers and sisters (uncles, aunts, nephews, nieces, etc.);

the State.

Several situations might arise with this hierarchy of heirs:

Situation 1: the deceased has a surviving spouse and children (or grandchildren)

In law, the surviving spouse is an undivorced spouse against whom there is no final separation order.

The estate is shared equally between the children of the deceased in proportion to their number, subject to the rights of the surviving spouse.

Example:

If the deceased has left one child, it is that child that inherits the whole estate, subject to the rights of the surviving spouse.

If the deceased has left two children, those two share the deceased's estate, again subject to the rights of the surviving spouse.

In that situation, the surviving spouse has a choice between:

usufruct (the right to enjoy the use and benefits) of the property jointly occupied by the spouses and its furniture, on condition that the deceased had full ownership of the property or joint ownership with the survivor, and

the smallest legitimate child's portion, provided that it is not less than a quarter of the estate.

The surviving spouse is allowed three months and 40 days from the death to exercise the option by a declaration to the registry of the district court in the jurisdiction in which the succession is opened. If no choice is made within the specified period, the surviving spouse is deemed to have opted for usufruct.

If the surviving spouse opts for the child's portion, the children's shares will be reduced proportionately, to the extent necessary to constitute the portion of the surviving spouse.

What happens if one of the children of the deceased has predeceased them but has left children?

In that case, substitution (*représentation*) applies. The child(ren) of the predeceased child (i.e. the grandchildren of the deceased) then divide their father's or mother's reserved portion between them.

In other words, together they receive the portion that would have passed to that person if they had survived the deceased.

What happens if the surviving spouse remarries after opting for usufruct of the joint home?

In that case, the children, or grandchildren where the deceased has been predeceased by one of the children, may seek a joint agreement for the usufruct to be converted into capital.

The capital must be equal to the value of the usufruct, which depends, inter alia, on the age of the beneficiary of the usufruct.

The application for conversion must be made to the court within six months of the surviving spouse's remarriage and must be made by all the children, or grandchildren where the deceased has been predeceased by one of the children.

If not all the children have agreed to apply for conversion into capital, the decision is at the court's discretion.

Situation 2: the deceased has a surviving spouse but no children

If the deceased leaves no children or descendants of children, the surviving spouse takes precedence over all other relatives of their deceased spouse and accordingly receives the deceased's whole estate, regardless of whether the surviving spouse subsequently remarries.

However, surviving spouses are not entitled heirs (*héritier réservataire*). Therefore, unlike the children of the deceased, they are not legally entitled to a reserved portion. In other words, if the deceased has no children the surviving spouse could theoretically be excluded from the spouse's estate by either a gift or a will.

Situation 3: the deceased has no children or spouse but leaves brothers and sisters (or nephews and nieces)

In that situation, a distinction has to be made according to whether the deceased's parents are still alive.

If the parents are still alive, the father and mother each receive one quarter of the estate, i.e. one half in total.

The other half is shared between the brothers and sisters or their descendants.

If only the father or mother survives the deceased, they receive one quarter of the estate, while the brothers and sisters or their descendants are allocated the remaining three quarters.

The children of the brothers and sisters (i.e. the nephews and/or nieces of the deceased) share between them the reserved portion of their father or mother by right of representation if their parents predecease the deceased.

Thus together they receive the portion that would have gone to their father and/or mother if he/she had survived the deceased.

Situation 4: the deceased has no children, spouse, brothers and sisters or nephews and nieces but their parents are still alive

In that situation, the whole estate goes to the father and mother of the deceased, each receiving half.

If only the father or the mother is still alive, that person inherits the whole estate of their predeceased child (ibidem).

Situation 5: the deceased has no children, spouse, brothers and sisters or nephews and nieces and their parents and other ascendants are dead

In that situation, the uncles and/or aunts of the deceased, their great uncles and/or great aunts, cousins and descendants of cousins are to be considered heirs.

The estate is divided between two lines, the paternal and the maternal line, each receiving half of the estate.

Any heir beyond a cousin's grandson or granddaughter, in the maternal or paternal line, can no longer inherit. In that situation, the estate becomes the property of the State, which is known as estate in escheat.

5 What type of authority is competent:

5.1 in matters of succession?

The succession procedure is instituted by the heir or heirs, who, on their own initiative, assign all transactions for the settlement of the estate to a notary chosen by them or appointed by the testator.

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

No specific authority is designated in Luxembourg law for the acceptance of succession. Under the relevant provisions of the law, acceptance may be explicit or tacit. Acceptance is explicit when a person assumes the title or capacity of heir in an official or private deed. Acceptance is tacit when an heir takes action that necessarily implies their intention to accept and that they would only be entitled to take in their capacity as an heir.

Under the Civil Code, waiver of succession must be made at the registry of the court of first instance in the district in which succession takes place, in a special register maintained for that purpose.
In view of the implications, rights and obligations that might result from a succession, it is recommended that a notary is consulted before accepting or waiving succession.

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

The Luxembourg Civil Code does not contain any specific rules on that point and Luxembourg case-law is therefore based on the principle that any procedure may be used for acceptance of a legacy (universal, by general title, or individual).
The same applies to renunciation of an individual legacy. Thus renunciation may, inter alia, be tacit, if for example the legatee refuses to perform the obligations associated with the legacy.
In the case of renunciation of a universal legacy or legacy by general title, some courts require compliance with the formal rules laid down for waivers of succession, whilst other courts hold that these rules do not apply.

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

The above rules apply to acceptance of a reserved portion of the estate.
A reserved portion can only be waived at the registry of the court of first instance in the district in which the succession is opened, in a special register maintained for that purpose.

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)

The succession procedure is instituted by the heir or heirs, who, on their own initiative, assign all transactions for the settlement of the estate to a notary chosen by them or appointed by the testator.

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

At the time of death, the deceased's assets pass directly to the heir. However, that does not mean that the heirs have to accept the succession (see above).
For a person to be able to inherit, the following conditions must be satisfied in particular. The person must:
have legal existence at the time of the death of the testator, i.e. at least have been conceived, on condition that the child in question is born viable;
not be excluded by law, as particularly in the case of:
persons lacking legal capacity;
medical doctors or surgeons, health professionals and pharmacists treating a person during the illness leading to their death, if a will has been made in their favour during the illness;
not have been excluded from succession on the grounds that they are debarred.
As regards the legacy, the procedure for payment of a legacy (*délivrance de legs*) or the possession order (*envoi en possession*) procedure should be followed, as appropriate.

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

Yes, if the heirs accept the succession unconditionally.
However, at the time the succession is opened, the heirs may also accept it subject to an inventory.
The effect of drawing up an inventory gives heirs the advantage that they are liable for payment of the debts on the estate only up to the value of the assets they have received and they may even be released from payment of the debts by surrendering all assets in their inheritance to creditors and legatees.

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

The testator is free to appoint any person(s) they choose to execute their will, apart from minors.
See above for the role of the administrator of the estate.
According to Article 1 of the law of 25 September 1905 on the registration of rights *in rem* in immovable property, all transactions *inter vivos*, whether or not against payment, transferring rights *in rem* in immovable property, other than preferential rights and mortgages, are to be registered with the mortgage registry in the jurisdiction in which the property is situated. Article 2 of the law provides that only court decisions, official deeds and administrative deeds may be registered.

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?

Under the Luxembourg law of succession, there are three possible situations involving administration of the estate:

1) Administration of vacant succession

In cases of vacant succession, the competent court of first instance, at the request of the persons concerned or on application by the Public Prosecutor, appoints an administrator to administer the succession.

2) Administrative acts where succession is accepted subject to an inventory

In this particular case it is the beneficiary heir who is responsible for administering the assets of the estate and is accountable to creditors and legatees for his administration.
According to Luxembourg case-law, the obligation to recover the debts owed to the succession is, inter alia, an integral part of that administration.
The courts may, exceptionally, assign the administration to a third party. That is possible when, due to their failure to act, mismanagement or incompetence, the heirs who have opted for an inventory jeopardise the interests of the creditors of the estate in question and might prejudice them (Luxembourg case-law).

3) Administrative acts in the case of joint ownership of the estate

In the case of joint ownership of the estate, the president of the competent district court may appoint a co-heir as administrator.

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

The testator is free to appoint any person(s) they choose to execute their will, apart from minors.
See above for the role of the administrator of the estate.

9.3 What powers does an administrator have?

See above.

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 statutory declaration (*acte de notoriété*) drawn up by a notary, which has additional probative value.

Last update: 09/05/2017