Succession

Malta

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

The disposal of property after somebody's death can be performed in three ways: (a) by means of a will — which can be a joint one, known as unica carta, between a husband and wife — or (b) by means of a secret will deposited in Court by the testator or the notary, or in the absence of one of these (c) the distribution of property is carried out according to law (intestate *succession*).

A will may dispose of all the property or part of it. Any property not covered by the will becomes disposable according to law. Wills may include dispositions by universal title, where the testator may bequeath all of his property to one or more persons (known as heirs), and dispositions by singular title, with persons inheriting under that title known as legatees.

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

Within fifteen days from the date of the will, the notary draws up a note of enrolment and registers it with the Director of the Public Registry. Secret wills may be delivered by the testator before a judge or magistrate sitting in the Court of Voluntary Jurisdiction: they may also be delivered in person to a notary, who has four working days from the date of delivery to file the will in the Court of Voluntary Jurisdiction for safekeeping by the Court registrar.

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

The Civil Code refers to the reserved portion. This is a right of credit on the estate of the deceased set aside by law for the descendants of the deceased by the surviving wife or husband. In accordance with Section 616 of the said Code, the reserved portion set aside for all of the children — whether conceived or born in wedlock, conceived or born out of wedlock, or adopted — amounts to one-third of the value of the estate where there are no more than four children, and half of the value of the estate where there are five children or more.

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

When there is no will, the will is not valid, the heirs do not want to inherit or cannot inherit, or there is no right of accretion between the heirs, intestate succession takes place under the law.

In such situations, the inheritance passes down by law to the descendants, the ascendants, the collateral relatives, the wife or husband of the deceased person and the Government of Malta. In this case succession operates in accordance with the proximity of the relationship, which is determined by the number of generations. When the deceased is not survived by any persons entitled to succeed, the inheritance passes down to the Government of Malta.

In the event of intestate succession, the inheritance will not pass down to any person who prevented the deceased from making a will using fraudulent or violent means and is thus deemed incapable or unworthy of receiving it.

5 What type of authority is competent:

5.1 in matters of succession?

The Maltese courts have general jurisdiction to decide disputes related to successions. The Partition of Inheritances Tribunal has special jurisdiction in certain specific circumstances when heirs do not agree on how the partition of the inheritance is to take place.

Generally, when there are no disagreements or disputes on successions, notaries and lawyers are engaged.

Any interested person may also go to the Court of Voluntary Jurisdiction to seek a decree ordering the opening of a succession in his favour.

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

The Registrar of the Court and Notaries

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

The Registrar of the Court and Notaries

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

The Registrar of the Court and Notaries

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 commences when an interested person goes to a notary or lawyer and the latter carries out research both in the Public Registry, for public wills, and in Court, for secret wills. After this process the succession is opened: here, the notary or lawyer identifies the heirs and legatees, if any, and informs them of the results of the research. The property is then divided in accordance with the will of the testator. If the deceased has left no will the property is divided according to the provisions of law.

Both movable and immovable property may be sold if all the heirs agree, with the proceeds being divided amongst the heirs according to the proportions indicated in the will.

In the event of a dispute, for example regarding the authenticity of the will or the partition of the inheritance, the heir raising the point may take the matter to the First Hall of the Civil Court or to the Partition of Inheritances Tribunal.

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

Succession is opened at the time of death, or on the date on which the judgement declaring that the person whose succession is concerned is to be presumed dead by reason of his long absence becomes *res judicata*.

No person is obliged to accept an inheritance devolving upon him. Acceptance may be either express or implied. It is implied if the heir takes any action that implies his intention to accept the inheritance, and it is express if he assumes the status of heir either in a public deed or in a private written document. Conversely, renunciation cannot be presumed.

In the case of a legacy, the legatee has, from the date of death of the testator, the right to ask possession from the heir of the thing left as a legacy.

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

Yes, the heirs are responsible for the debts of the deceased person in the proportion and manner established by the testator. If the testator dies intestate or if he does not provide for the apportionment of the debts, the heirs pay the debts in proportion to their respective share of the inheritance. Each heir is personally responsible for the debts of the inheritance.

Where any one of the heirs possesses property hypothecated to secure the debt, he will, with regard to such property, be liable for the whole debt. Where one heir has paid more than his share of a common debt because of such hypothecation, he has a right of relief against the other heirs, limited to their share.

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

The law of succession does not create an obligation on the heirs to register immovable property they inherited. However, according to the Duty on Documents and Transfers Act, persons inheriting immovable property must register a *causa mortis* declaration at the Public Registry. This declaration, essentially, contains the date, the particulars of the deceased person and of the heir/legatee, the date and place of death, a description of the estate inherited, the title of transfer, the value of the immovable property, the place where the declaration was made and the signatures of the declarant and of the notary public.

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 is not mandatory.

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

The heir or the testamentary executor.

9.3 What powers does an administrator have?

An administrator or testamentary executor draws up an inventory of the inheritance. He will exercise and promote the rights of that inheritance by answering any judicial claims brought against the inheritance, administer — under the obligation to deposit — any monies included in the said inheritance or received for the sale of movable or immovable property, and render account to the person concerned.

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?

In general, no documents are issued as proof of the status and rights of the beneficiary since succession automatically passes upon death. However, an interested person may go to the Court of Voluntary Jurisdiction to seek the opening of the succession in his favour.