Adapting rights in rem

Estija

1 Which are the rights in rem that could arise from a succession under the law of this Member State?

In general, Estonian law applies the principle of universal succession, according to which the property of the deceased person (the estate), including all the rights and obligations of the deceased, is transferred to another person (the successor). If there is more than one successor, the estate is owned by them jointly in accordance with section 147 of the Law of Succession Act. No new rights arise from inheritance. The instructions set out in a will (bequests and instructions on how the estate is to be divided) fall within the law of obligations only.

In certain cases, the surviving spouse of the deceased may request an easement for a property that was the matrimonial home of the spouses (section 16(3) of the Law of Succession Act), provided this right is a claim under the law of obligations and not a right in rem.

The right of the successor to property rights associated with the estate may be restricted in cases where he or she is a provisional successor for whom a subsequent successor has been designated (Section 48 of the Law of Succession Act). In such cases, an entry is made in the Land Register stating that the successor is a provisional successor (Section 491 of the Land Register Act).

2 Are these rights in rem recorded in a register of rights in immovable or movable property and, if so, is such recording compulsory? In which register(s) are they recorded and what are the registration requirements and procedure?

Immovable properties and related rights are entered in the Land Register. All property rights are transferred to the successor by means of the Land Register. In the event that the Land Register has become incorrect due to the transfer of a right in rem outside the Land Register, the land registry department will correct the entry on the basis of the registration application submitted by the new owner of the right in rem. A document certifying the transfer of the right in rem (certificate of succession) must be appended to the registration application (section 651(1) of the (Land Register Act). In order to establish whether the bequestor was the sole owner of the right in rem or whether the right in rem is a joint property, a certificate of ownership must in some cases be appended to the registration application in addition to the certificate of succession. A registration application must be notarised or digitally signed (section 34(21) of the Land Register Act.

The land registry department may require the owner of a right in rem or the executor of a will to submit a registration application and the documents necessary for the correction and making of an entry in the Land Register under the threat of a fine (section 651(5) of the Land Register Act).

Any other property subject to registration is also transferred to the successor regardless of the entry in the register. As a rule, an heir is required to present to the relevant register the necessary information and documents concerning the inheritance of an asset or right. However, in the case of inheritance of shares or membership in a limited liability company or a building association, a notary public is required, after the notarisation of the certificate of succession, to send a notice of the inheritance of the shares or membership to the Commercial Register.

3 Which effects are linked to the registration of the rights in rem?

All rights in rem are transferred to heirs by law and are independent of the registration of these rights. As a rule, registry entries become invalid when a succession is opened and the heir is generally required to have the entries altered.

4 Are there specific rules and procedures in place for the adaptation of a right in rem to which a person is entitled under the law applicable to the successions in case the law of the Member State in which the right is invoked does not know such right in rem?

According to section 6291 of the Code of Civil Procedure, a court may initiate a proceeding for adaptation of a right in rem of a foreign country based on the petition of the person who is entitled thereto. If necessary, the court hears the petitioner. The court sets out in the ruling on adaptation of a right in rem whether Estonian laws prescribe a right in rem which is equivalent to the right in rem of the foreign country that is to be adapted. If an equivalent right in rem exists, the court indicates it in the ruling. If, for the purpose of enforcement of a ruling on adaptation of a right in rem, the petitioner must contact a non-judicial registrar or another person or institution, this fact must be set out in the ruling. The petitioner may file an appeal against the ruling.

According to section 475(1)(101) of the Code of Civil Procedure, adaptation of rights in rem in accordance with Article 31 of Regulation (EU) No 650/2012 of the European Parliament and of the Council is dealt with in proceedings on petition.

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