Adapting rights in rem

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

The principle of seisin applies in the Netherlands. This means that the heirs take over *ipso jure* the position of the deceased. Ownership of the assets and debts of the estate is transferred under universal title to the heirs who have accepted the succession.

Seisin is regulated in Article 4:182 of the Civil Code (*Burgerlijk Wetboek*) (BW).

Article 4:182 of the BW provides:

1 When a person dies, the heirs shall succeed *ipso jure* to that person's transferable rights, possessions and holdings. The first sentence shall not apply when the estate of the deceased is divided in accordance with Article 13. In that case, the spouse shall succeed *ipso jure* to the possessions and holdings of the deceased.

2 The heirs shall become *ipso jure* debtors of the deceased's debts which have not been extinguished at the time of death. Where performance is divisible, each of them shall be responsible for a part, in proportion to their share in the inheritance, unless they are jointly and severally liable.

If the deceased leaves a spouse and one or more children and there is a legal division of the estate (*wettelijke verdeling*), the surviving spouse / registered partner takes over all the assets and debts and the children receive only a pecuniary claim. The descendants are not liable for the debts of the estate. Only the surviving spouse / registered partner is liable for the debts.

The principle of seisin means that no rights *in rem* or property rights arise from the succession as such. The estate does not constitute a separate asset in the Netherlands. There is no prohibition on the disposal of the estate assets, and the estate cannot be attached. Attachment of the goods from the estate among the heirs is, however, possible.

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?

Since the estate itself is not a separate asset, it is not entered in any registers.

The Certificate of Succession or the European Certificate of Succession may, however, be entered in the land register, see Articles 27 and 27a of the Land Register Act (*Kadasterwet*). This enables the heirs to make it known that the owner has died and that ownership has been transferred to them under universal title. However, registration is not a constitutive requirement. Even without registration, ownership is transferred *ipso jure*. Should the heirs then divide the assets of the estate, formal delivery (*levering*) is required. This is a transfer under particular title. The division is regulated in Article 3:186 of the BW.

Article 3:186 of the BW provides:

1 For the transfer of the portion allocated to each of the parties, formal delivery shall be required in the same manner as prescribed for the transfer.

2 The portion acquired by a party shall be held under the same title as that under which the parties held it jointly before the division.

For the formal delivery of immovable property or limited rights in the same, Article 3:89 of the BW requires a notarial instrument, which must be entered in the public registers.

Article 3:89 of the BW provides:

1 The formal delivery required for the transfer of the immovable property shall be effected by means of a notarial instrument drawn up for that purpose between the parties, followed by registration thereof in the relevant public registers. Both the transferee and the transferor may have the instrument registered.

2 The instrument of formal delivery must accurately state the title of transfer; secondary conditions which do not concern the transfer may be omitted from the instrument.

3 Where a person acts as the authorised representative of one of the parties in respect of a formal delivery instrument, the power of attorney must be specified in the instrument.

4 The provisions of this article shall apply *mutatis mutandis* to the formal delivery required for the transfer of other registered property.

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

See above.

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?

No, there are no specific requirements in the BW or the Land Registry Act.

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