Uwaga: niedawno wprowadzono na tej stronie zmiany w oryginalnej wersji językowej en. Strona w wybranej przez Ciebie wersji językowej jest obecnie tłumaczona przez nasze służby tłumaczeniowe.

angielski

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Prawo spadkowe

Krajowe przepisy prawa spadkowego bardzo się różnią w poszczególnych państwach członkowskich (na przykład pod względem grup spadkobierców, udziału spadkowego i wysokości zachowku, sposobu zarządzania masą spadkową, zakresu odpowiedzialności spadkobierców za długi, itd.).

Informacje ogólne

Ważnym krokiem ułatwiającym dziedziczenie o charakterze międzynarodowym stanowiło przyjęcie w dniu 4 lipca 2012 r. nowych unijnych przepisów na potrzeby uproszczenia formalności prawnych dotyczących międzynarodowych spadków, z którymi to formalnościami muszą sobie radzić obywatele. Przepisy te mają zastosowanie w przypadku dziedziczenia po osobach zmarłych począwszy od 17 sierpnia 2015 r.

Przepisy rozporządzenie gwarantują, że międzynarodowe sprawy spadkowe będą traktowane w sposób spójny oraz rozpatrywane zgodnie z prawem jednego państwa i przez jeden organ. Co do zasady, prawo właściwe dla poszczególnych spraw spadkowych i sąd właściwy ustala się na podstawie ostatniego miejsca zwykłego pobytu zmarłego. Obywatele mogą jednak zdecydować, że prawem właściwym dla ich sprawy spadkowej powinno być prawo państwa, którego obywatelstwo posiadają. W międzynarodowej sprawie spadkowej stosowanie prawa jednego państwa przez jeden organ zapobiega przypadkom prowadzenia równoległych postępowań i wydawania sprzecznych orzeczeń sądowych. Gwarantuje to również, że orzeczenia wydane w poszczególnych państwach członkowskich są uznawane na terytorium Unii bez potrzeby przeprowadzania specjalnej procedury.

Rozporządzenie wprowadza także europejskie poświadczenie spadkowe. Ten dokument wydawany przez organ prowadzący postępowanie w sprawie spadkowej na potrzeby spadkobierców, zapisobierców, wykonawców testamentu lub zarządców majątku spadkowego można wykorzystać, gdy zachodzi konieczność udowodnienia ich praw i uprawnień w innych państwach członkowskich. Z chwilą jego wydania europejskie poświadczenie spadkowe jest uznawane we wszystkich państwach członkowskich bez konieczności przeprowadzania specjalnej procedury.

W dniu 9 grudnia 2014 r. Komisja przyjęła rozporządzenie wykonawcze wprowadzające formularze, które mają być stosowane do celów wykonywania rozporządzenia w sprawie spadków:

Word (322 Kb) pl

PDF (762 Kb) pl

Portal „e-Sprawiedliwość” oferuje możliwość wypełnienia tutaj w trybie online i zapisania w formacie PDF formularza V (europejskie poświadczenie spadkowe).

W Danii i Irlandii nie stosuje się powyższego rozporządzenia. W konsekwencji postępowanie w sprawach dotyczących międzynarodowych spadków prowadzone przez organy tych dwóch państw w dalszym ciągu będzie regulowane ich przepisami krajowymi.

Z zakresu rozporządzenia wyłączono zagadnienia związane z podatkiem spadkowym.

Na tej stronie dostępne są informacje o nowych unijnych przepisach prawa spadkowego.

Aby zapoznać się z arkuszami informacyjnymi dotyczącymi **materialnych i procesowych aspektów krajowego prawa spadkowego w poszczególnych państwach członkowskich**, proszę kliknąć na flagę odpowiedniego państwa umieszczoną na niniejszej stronie. Arkusze informacyjne zostały opracowane w ramach europejskiej sieci sądowej w sprawach cywilnych i handlowych (EJN-sprawy cywilne) we współpracy z Radą Notariatów UE (CNUE).

Spadki w Europie to strona internetowa prowadzona przez Radę Notariatów UE. Strona umożliwia znalezienie informacji na temat postępowania spadkowego w 22 państwach członkowskich.

Aby znaleźć notariusza w danym państwie członkowskim, można skorzystać z narzędzia umożliwiającego wyszukiwanie notariuszy (Znajdź notariusza). Narzędzie to udostępnia Komisja Europejska we współpracy z uczestniczącymi w projekcie stowarzyszeniami notarialnymi.

Między przepisami krajowymi dotyczącymi testamentów istnieją znaczne różnice. W niektórych państwach członkowskich osoba sporządzająca testament (zwana spadkodawcą) musi go zarejestrować. W innych państwach członkowskich zaleca się rejestrację jedynie niektórych rodzajów testamentów. W kilku państwach członkowskich nie istnieją rejestry testamentów.

W przypadku gdy zajdzie konieczność zarejestrowania testamentu w danym państwie członkowskim lub w razie potrzeby uzyskania informacji o tym, czy zmarły sporządził testament, istnieje możliwość zapoznania się z arkuszami informacyjnymi przygotowanymi przez Stowarzyszenie Europejskiej Sieci Rejestrów Testamentowych (ENRWA), które to arkusze są dostępne w 3-4 językach. W arkuszach informacyjnych wyjaśniono, jak w poszczególnych państwach członkowskich można zarejestrować testament oraz zawarto porady, w jaki sposób sprawdzić, czy testament został sporządzony.

Powiązane strony

Prawo spadkowe – powiadomienia dokonane przez państwa członkowskie oraz wyszukiwarka pomagająca w ustaleniu właściwego sądu lub organu

Poradnik dla obywateli : jak przepisy UE upraszczają międzynarodowe sprawy spadkowe

Wnioski wypływające z projektu „Dalsze zmiany w dziedzinie interoperacyjności rejestrów testamentów”dotyczącego możliwości usprawnienia postępowania spadkowego za pośrednictwem środków elektronicznych; projekt prowadzony przez estońskie Ministerstwo Sprawiedliwości we współpracy ze Stowarzyszeniem Europejskiej Sieci Rejestrów Testamentów, Radą Notariatów Unii Europejskiej, estońską Izba Notarialną, estońskim Centrum Rejestrów i Systemów Informatycznych oraz państwami członkowskimi Unii Europejskiej:

Studium wykonalności PDF (755 Kb) en

Sprawozdanie końcowe PDF (507 Kb) en

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Ostatnia aktualizacja: 16/01/2023

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Succession - Belgium

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

Under Belgian law there are three main forms of will: **public** or **notarially recorded** wills, **holographic** wills (written out, dated and signed by the testator alone) and **international** wills.

Testators must be capable of expressing their wishes validly and freely (Articles 901 to 904 of the Civil Code).

In principle and save for certain exceptions, agreements as to succession are prohibited.

In a cross-border situation, a will is in principle valid in Belgium if it conforms to the law of the place where it was made (in accordance with the principle '*locus regit actum*') or one of the other laws specified in the Hague Convention of 5 October 1961.

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

A notary (*notaire*/*notaris*) before whom a public or international will is made, or with whom a holographic will is lodged, has an obligation to register the will in the central register of wills, administered by the Royal Federation of Belgian Notaries (*Fédération Royale du Notariat belge*/*Koninkljke Federatie van het Belgisch Notariaat*). Testators making a holographic will lodged with a notary may decline to have their will entered in the register.

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

Belgian law applies the principle of a reserved portion, under which it is compulsory for a minimum share of the estate (a reserved portion) to go to the surviving spouse, children or father and mother of the deceased, as the case may be.

In the case of children (or descendants), the reserved portion is half the estate where there is one child, two thirds where there are two children, and three quarters where there are three children or more.

Where there are no descendants, the father and mother are each entitled to one quarter of the estate. In that case, however, the entire estate may be left to a surviving spouse.

The surviving spouse always receives at least either the usufruct (the right to enjoy the use and benefits) of half the assets comprising the estate, or the usufruct of the property used as the main residence and its furniture, even if that exceeds half the estate.

If the testator has chosen not to make provision for the reserved portion in his or her will and the heirs agree to respect the testator's wishes, the will may be applied. However, those whose reserved portion has not been taken into account and who intend to claim it can bring an action for reduction (*action en réduction*/*vordering tot inkorting*).

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

If the deceased was unmarried and had no children, the ascendants and the nearest collateral heirs (brothers and sisters) inherit first. The father and mother each receive a quarter and the brothers or sisters, or their descendants if any, the remainder. If either or both of the parents are deceased, their share passes to the brothers and sisters. If there are no ascendants or brothers and sisters or descendants of brothers or sisters, half of the estate passes to the relatives on the mother's side and the other half passes to the relatives on the father's side (uncle, aunt, cousin, etc.).

If the deceased was unmarried and leaves children, these exclude all other members of the family. They share full ownership of the estate in equal portions. However, if a child is already deceased (or declines succession or is debarred from succession) and leaves descendants, the latter will inherit in the place of that child.

If the deceased leaves a spouse and children, the surviving spouse will inherit the usufruct of all the assets comprising the estate. The children inherit the bare ownership in equal shares.

If the deceased leaves a spouse but no children, the surviving spouse becomes the sole heir, provided the deceased has no ascendants or collateral relatives up to the fourth degree. Where the latter exist, the surviving spouse in principle receives the usufruct and the other heirs the bare ownership. However, the portion that the surviving spouse receives in that situation also depends on the matrimonial property regime under which the spouses were married. If the couple were married under a joint property arrangement, the surviving spouse inherits full ownership of the deceased's share of the joint property.

If the deceased is survived by a partner with whom he or she had entered into a registered partnership, the form of registered partnership recognised in Belgium is 'legal cohabitation'. In the succession, the surviving legal cohabitant has a right of usufruct of the immovable property used as the joint family home during their cohabitation, together with its furniture. However, the surviving legal cohabitant may be deprived of that right of usufruct by a will or *inter vivos* gift to other persons.

If the deceased is survived by a partner with whom he/she had not entered into a registered partnership – cohabitation without a written agreement (a de facto partnership, not registered), the partner can inherit only if the deceased made provision to that effect in a will. Belgian law does not grant them any automatic right to inherit.

5 What type of authority is competent:

5.1 in matters of succession?

No specific authority is responsible for the succession procedure.

However, the law requires that a notary be consulted in the case of a holographic or international will. Also, in certain situations, the court of first instance (*tribunal de première instance*/*rechtbank van eerste aanleg*) or justice of the peace (*juge de paix*/*vrederechter*) may be required to act, particularly if the succession passes to persons without legal capacity (e.g. minors), if succession is accepted subject to inventory, if succession is vacant, if a possession order (*envoi en possession*/*bevelschrift tot inbezitstelling*) or delivery of a legacy (*délivrance du legs*/*afgifte van het legaat*) is sought, or if settlement/partition is disputed and a notary has to be appointed by the court.

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

Ownership of the assets comprising the estate passes to the prospective heirs purely through the fact of the death.

However, they have a choice: they may accept it unconditionally, or accept it subject to inventory, or decline it.

Succession may be accepted expressly or tacitly. Acceptance is express when a person assumes the title or capacity of heir in a public or private deed. It is tacit when an heir takes action that necessarily implies the intention to accept, and that they would be entitled to take only in the capacity of heir.

Succession may be accepted 'subject to inventory' (*sous bénéfice d'inventaire*/*onder voorrecht van boedelbeschrijving*) in accordance with the procedure laid down in Articles 793 et seq. of the Civil Code.

An heir wishing to accept succession subject to inventory must make a special declaration at the **registry** (*greffe*/*griffie*) **of the court of first instance** of the district in which succession is opened, or **before a notary**.

Similarly, succession may be declined by taking a copy of the death certificate to the **registry of the court of first instance** in the place where the deceased was resident and signing a waiver (Articles 784 et seq. of the Civil Code) or doing so **before a notary**.

These declarations must be recorded in a register held at the registry of the place where the succession is opened.

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

See point 7 below.

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

There is no specific procedure (see point 3 above).

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)

Under the Belgian Civil Code, the principle is that the succession passes automatically, without any specific steps being taken.

By the mere fact of a person's death, their assets, rights and shares automatically pass to their heirs, subject to the obligation to pay the charges on the estate (Articles 718 and 724 of the Civil Code). However, there are exceptions (see point 7 below).

In the case of settlement/partition by the court, the succession will be managed by a notary appointed by the court, and closed by a final scheme of partition (*état liquidatif*/*staat van vereffening en verdeling*). In the case of amicable settlement/partition, a notarial instrument will be needed only for the partition of immovable property.

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

Belgian law is governed by the principle that the entire estate (assets and liabilities) passes to the heirs purely through the fact of the death. However:

beneficiaries of universal legacies created by a holographic or international will must obtain a possession order (*envoi en possession*/*bevelschrift tot inbezitstelling*) from the president of the family court (*tribunal de la famille*/*familierechtbank*) (Article 1008 of the Civil Code);

beneficiaries of individual legacies (Article 1014 of the Civil Code), beneficiaries of legacies by general title (Article 1011 of the Civil Code) and, where there are heirs entitled to a reserved portion, beneficiaries of universal legacies created by a notarially recorded will (Article 1004 of the Civil Code) must apply for 'delivery of the legacy' (*délivrance du legs*/*afgifte van het legaat*);

certain categories of legatees must be authorised by a public authority to accept the legacy left to them (e.g. a legacy to a municipality, a body recognised as being of public utility, or in certain cases a foundation or non-profit organisation).

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

The heirs are liable if they accept the succession unconditionally. In that case, they are liable for all the charges and debts on the estate (Article 724 of the Civil Code).

If the heirs accept the succession subject to inventory, they are liable for the debts on the estate only up to the value of the assets they have received (Article 802 of the Civil Code). An heir wishing to accept succession subject to inventory must make a special declaration at the registry of the court of first instance of the district in which succession is opened, or before a notary.

They are not liable if they decline succession by making a declaration at the registry of the appropriate court of first instance or before a notary (Article 785 of the Civil Code).

Furthermore, individual legatees, unlike universal legatees and legatees by general title, are not in principle liable for the debts of the estate (Article 1024 of the Civil Code).

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

The Mortgages Act (*loi hypothécaire*/*hypotheekwet*) of 16 December 1851 governs the publication of immovable property transactions. Article 1 of the Act states that 'all acts *inter vivos* (whether or not against payment) transferring or declaring rights *in rem* over immovable property, other than liens and mortgages, are to be recorded in a register kept for that purpose at the mortgage registry in the district in which the property is situated'.

Article 2 of the Act states, on that point, that 'only judgments, official deeds and private deeds, recorded by a court or executed before a notary, will be registered. Powers of attorney for such instruments must be provided in the same form'.

The Mortgages Act of 16 December 1851 does not govern the transfer of ownership by death.

It does however require registration of deeds of partition (*actes de partage*/*akten van verdeling*). In that case, all heirs, whether or not they are inheriting immovable property, will be identified in the deed to be recorded in the mortgage registers. The same applies to the public or private sale of immovable property undivided between heirs.

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?

In principle Belgium does not have a system for the administration of estates.

Nevertheless, Article 803*bis* of the Civil Code states that heirs who have accepted subject to inventory may decline responsibility for the administration and distribution of the estate. They must first request the president of the family court to appoint an administrator to whom they will hand over all the assets of the estate, who will be responsible for settlement of the estate in accordance with certain rules.

In addition, Article 804 states that, if the interests of the creditors of the deceased or individual legatees might be jeopardised by the negligence or financial situation of a beneficiary heir, any of the parties concerned may have him or her replaced by an administrator with responsibility for settling the estate, appointed by interim order (*ordonnance rendue en référé*/*beschikking in kort geding*), the heir having been consulted or previously given notice.

In addition, the testator may appoint an executor to ensure that the will is properly executed.

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

See previous question.

9.3 What powers does an administrator have?

Administrators appointed in accordance with Articles 803*bis* and 804 have the same powers as a beneficiary heir. They are subject to the same obligations as an heir. They are not required to provide security.

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?

Proof of a person's status as an heir is provided by an affidavit (*acte de notoriété*/*akte van bekendheid*) or more commonly by a certificate of inheritance (*certificat d'hérédité*/*attest van erfopvolging*) or deed of inheritance (*acte d'hérédité*/*akte van erfopvolging*). A certificate or deed of inheritance is issued by a notary or, in some circumstances, by the collector for the estate duty office competent to receive the declaration of succession for the deceased (Article 1240 *bis* of the Civil Code).

A notarial document (*acte notarié*/*notariële akte*) is a document that reflects the truth. It has probative value: the declaration made by the notary drawing it up is deemed to be accurate. The notary attests certain facts by stating the identity of the persons appearing before him or her and certifying the information they are asking him or her to record. The notarial document is authentic evidence of its content. Furthermore, such a public document has an incontestable date. Statements protected by such authenticity can be proven false only by proceedings to contest their accuracy (*inscription de faux*/*betichting van valsheid*).

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Succession - Bulgaria

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?

Any person who is 18 years of age or above and is of sound mind may dispose of his or her property upon death through a will.

The testator may dispose of his or her entire property by a will. A distinctive feature of Bulgarian law is the fact that the reserved share of the property of a testator or intestate deceased is in all cases immune to testamentary dispositions, which can thus be presumed to apply only to the disposable share of that property.

Testamentary dispositions may apply to the whole of the testator's property, to a fraction of that property or to a particular item of property.

Testamentary dispositions can also be conditional.

The Succession Act (Zakon za nasledstvoto) requires testamentary dispositions to be drawn up in a set form, so any instrument that deviates from that form is invalid.

Note that Bulgarian law does not allow two or more individuals to make testamentary dispositions in the same will, be they to their mutual benefit or to the benefit of third parties.

The law provides for two forms of a will: handwritten or notarised.

A handwritten will has to be written entirely in the testator's own hand. It must be dated and signed by the testator. The signature must be placed below the testamentary dispositions. The will may be delivered to a notary in a sealed envelope for safekeeping. In that case, the notary draws up a custodian statement on the envelope. The statement is signed by the testator and the notary and entered in a special register.

A handwritten will may be deposited either with a notary or with another person, who must seek its publication by a notary as soon as he or she learns of the testator's death.

If that person fails to do so, any interested party may apply to the district judge for the place where the succession is opened to set a time limit for presenting the will for publication by the notary.

The notary publishes the will by drawing up a statement that contains a description of the state of the will and makes note of its unsealing. The statement is signed by the person who has presented the will and by the notary. The paper on which the will was written is attached to the statement and each page is initialled by the above-mentioned persons.

A notarised will is drawn up by the notary in the presence of two witnesses.

The testator gives an oral statement of his or her will to the notary, who writes it down as stated and then reads it back to the testator in the presence of the witnesses. The notary makes note of the performances of these formalities in the will, specifying the place and date of the will. Afterwards the will is signed by the testator, the witnesses and the notary.

If the testator cannot sign the will, he or she must state the reason why and the notary makes note of this statement before reading out the will.

To publish a notarised will, the notary with whom it has been left for safekeeping draws up a statement describing the state of the will and noting its unsealing. The statement is signed by the notary. The paper on which the will was written is attached to the statement and each page is initialled by the above-mentioned persons.

A will may be revoked explicitly by a new will or by a notarial act in which the testator explicitly declares that he or she revokes his or her previous dispositions in whole or in part.

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

Under the Rules on Registration in force, transcripts of published wills concerning immovable property or immovable property rights must be registered.

Besides this, each registry service also keeps an alphabetical index reserved for notarial cases and wills. The names of testators whose notarised wills have been executed by notaries, revocations of wills, and testators whose handwritten wills have been handed over to notaries for safekeeping are also registered in that index. In such a case, the name of the notary keeping the notarial case or the handwritten will is recorded against the name of the testator.

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

As already stated, Bulgarian law restricts the freedom to dispose of property upon death. These restrictions are for the benefit of the testator's next of kin: a surviving spouse, children, and if the testator has no descendants (children or grandchildren), the deceased's parents.

These restrictions are established in Article 28 and Article 29 of the Succession Act and only concern cases in which the testator has descendants, surviving parents or a spouse. In such cases, the testator is barred from making a disposition or gift of property adversely affecting the share reserved for those persons. The share of the property other than the reserved share represents the testator's disposable share.

Where the testator is not survived by a spouse, the law defines the reserved share as:

in the case of one child (including an adoptee) or that child's descendants: one half;

in the case of two or more children or their descendants: two-thirds of the testator's property.

The reserved share of the surviving parent or parents is one-third, and the reserved share of the spouse is one-half if the spouse is the only heir or one-third if there are surviving parents of the deceased.

In cases where there are descendants and a surviving spouse, the reserved share of the spouse is equal to the reserved share of each child. In these cases the disposable share amounts to one-third of the property in the case of one child, one quarter in the case of two children and one-sixth of the property in the case of three or more children.

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

If the deceased has not made a will, the estate is inherited by their legal heirs, subject to the following established rules:

If the deceased was single and had no children, the surviving parents or the surviving parent receive equal shares of the property (Article 6 of the Succession Act, ZN).

If the deceased has left only ascendants twice or more removed, those closest to the deceased inherit equal shares (Article 7 ZN).

If there are only surviving siblings, they inherit equal shares (Article 8(1) ZN).

If there are surviving siblings and ascendants twice or more removed, the former receive two-thirds of the property and the latter one-third (Article 8(2) ZN).

If the deceased was single, but there are surviving children (including adoptees), the latter inherit equal shares (Article 5(1) ZN). The share of a predeceased child is passed down to its descendants by order of succession (representation).

If the deceased leaves a spouse but no children, ascendants, siblings or their descendants, the spouse inherits the whole property (Article 9 ZN).

Where the spouse inherits the property of the deceased, together with ascendants or siblings or their descendants, the spouse inherits half of the property if the succession takes place less than 10 years after the marriage. Otherwise, the spouse receives two-thirds of the property. Where the spouse inherits the property of the deceased, together with ascendants and siblings or their descendants, the spouse inherits one-third of the property in the former case and half in the latter case.

If the deceased leaves a spouse and children, the spouse and the children inherit equal shares (Article 9(1) ZN).

Where there are no individuals competent to inherit in the situations discussed above, or where all heirs waive the succession or forfeit the right to accept it, the estate passes to the State, save for movable property, homes, workshops and parking garages, as well as land parcels and immovable properties primarily intended for residential construction, which become property of the municipality in which they are situated.

5 What type of authority is competent:

5.1 in matters of succession?

Acceptance may be effected by applying in writing to the district judge in the district where the succession is opened, in which case acceptance is entered in a special register.

Acceptance of succession is also effected where, without applying in writing, the heir takes an action clearly indicating his or her intention to accept the succession or where the heir conceals inherited property. In the latter case, the heir forfeits the right to his or her share of the property concealed.

The succession may alternatively be accepted on the basis of an itemised description, in which case the heir is liable only up to the extent of the estate received.

In such cases, acceptance of the succession on the basis of an itemised description must be declared in writing before the district judge within three months of the date on which the heir learned of the opening of the succession. The district judge may extend this time limit by up to three months.

Acting at the request of any interested party, the district judge, after summoning the person entitled to inherit, sets a time limit for that person to declare or waive acceptance of the succession. If a court case has been brought against the heir, the time limit is set by the court hearing the case. If the heir fails to reply within the time limit set, he or she forfeits the right to accept the succession.

In this case, the heir’s declaration is entered in a special register for acceptances and waivers of succession.

Acceptance of succession on the basis of an itemised description is mandatory for persons under 18 years of age, persons declared incompetent to manage their own affairs, the State and public organisations, and such acceptance must be declared in writing within three months of learning of the opening of the succession. Acceptance is entered in a special register kept at the district court in the district where the succession is opened.

For wills, the person in possession of a handwritten will has to seek its publication by a notary as soon as he or she learns of the testator’s death.

Any interested party may apply to the district judge for the place where the succession is opened to set a time limit for presenting the will for publication by the notary.

The notary publishes the will by drawing up a statement that contains a description of the state of the will and makes note of its unsealing. The statement is signed by the person who has presented the will and by the notary. The paper on which the will was written is attached to the statement and each page is initialled by the above-mentioned persons.

If the will was handed over to the notary for safekeeping (Article 25(2) ZN), the above steps are taken by the notary concerned.

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

Succession takes place upon acceptance. Acceptance takes effect on the opening of the succession.

Apart from the cases of explicit acceptance through an express application in writing, acceptance may also be effected where, without applying in writing, the heir takes an action clearly indicating his or her intention to accept the succession or where the heir conceals inherited property. In the latter case, the heir forfeits the right to his or her share of the property concealed.

Acting at the request of any interested party, the district judge, after summoning the person entitled to inherit, sets a time limit for that person to declare or waive acceptance of the succession. If a court case has been brought against the heir, the time limit is set by the court hearing the case.

If the heir fails to reply within the time limit set, he or she forfeits the right to accept the succession.

In this case, the heir’s declaration is entered in a special register of acceptances and waivers of succession.

Waiver of succession follows the same procedure and is registered in the same way.

Regard should also be had to the obligation, under Article 43 of the Local Taxes and Fees Act (Zakon za mestnite danatsi i taksi) for banks, insurance companies and other corporations, as well as any other entities which are deposit keepers or obligors for securities, money or other property incorporated into a succession of whose opening they are aware, to send an itemised description of that property to the municipality where the succession is opened before any such property has been paid, delivered or transferred.

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

The procedure of acceptance or waiver of succession applies.

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

There is no special procedure for waiver or acceptance of a reserved share. An heir who is entitled to a reserved share but is not in a position to receive it in full due to bequests or gifts may apply to the court to reduce such bequests and gifts to the extent necessary to complete the reserved share after recovering the legacies and gifts made to the heir concerned, except for ordinary gifts.

If an heir whose reserved share is adversely affected exercises rights of succession against persons who are not legal heirs, the heir must have accepted the succession on the basis of an itemised description of the property.

For the purposes of establishing the disposable share and the amount of the heir’s reserved share, all assets belonging to the testator at the time of his or her death are collected in the estate after deduction of debts and any increase in the inheritance under Article 12(2) of the Succession Act. Gifts are then added, except for ordinary gifts, depending on their status at the time they were given and their value at the time of opening the succession in the case of real estate or at the time they were given in the case of movable property.
The testamentary dispositions are reduced on a pro rata basis without differentiating between heirs and legatees, unless the testator has stated otherwise.

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)

An estate is wound up by judicial or voluntary division.
Each co-owner has a right of division, regardless of the size of their share. Each heir may claim his or her share in kind, where practicable, and the inequality of shares is resolved by money.
Voluntary division is carried out with the consent of all co-owners. The voluntary division takes the form of a contract. In accordance with Article 35(1) of the Ownership Act, the voluntary division of movable property worth more than BGN 50 or of immovable property has to be carried out in writing and the signatures have to be notarised. In the case of voluntary division, each co-owner's notional share in the common estate becomes a separate and independent right of ownership over a real share of the co-owned assets.
Judicial division takes place under special proceedings governed by Article 341 et seq of the Civil Procedure Code. There is no limitation period for applying for assets to be divided. These contentious proceedings involve two stages.
Stage one concerns the admissibility of division.
The co-heir applying for division files a written application with the district court, enclosing:
the death certificate of the testator and a succession certificate;
a certificate or other evidence in writing concerning the estate;
copies of the application and its enclosures for the other co-heirs.
During the first court session any other co-heir may apply in writing for other assets to be included in the estate. It is also during the first court session that any co-heir may challenge another co-heir's right to take part in the division, the size of his or her share or the inclusion of certain assets in the estate.
In division proceedings the court hears disputes relating to origin, adoptions, wills, the authenticity of written evidence or applications to reduce the amount of testamentary dispositions or gifts.
The first stage ends with a ruling on the admissibility of the division. The court determines which assets will be divided among which persons and the share of each co-heir. When ruling a division of movable property to be admissible, the court also rules on which co-divider is to hold it.
In the same ruling or a subsequent one, if one or more heirs fail to use the estate in accordance with their succession rights, the court may, at the application of an heir, rule which heirs are to use which assets pending the completion of the division or what sums the users are to pay the other heirs for the use.
Stage two – the division itself. Shares are defined and specific assets are allocated to the exclusive ownership of the individual co-dividers. This is done by drafting a statement of division and drawing lots. The court draws up the statement of division on the basis of an expert opinion in accordance with the Succession Act. After drawing up the draft statement of division, the court summons the parties to present the statement to them and to hear their objections. Afterwards, the court draws up and promulgates the final statement of division in a court judgment. After the judgment on the statement of division enters into force, the court summons the parties to draw lots. The court may divide the inherited assets among the co-dividers without the drawing of lots if defining shares and drawing lots proves impossible or too inconvenient.
If an asset is indivisible and cannot be allocated to any share, the court orders its sale at a public auction. The parties to the division may bid at the public auction.
Where the indivisible asset is a home that used to be the property of marital community wound up by the death of a spouse or a divorce and the surviving spouse or ex-spouse vested with parental rights to the children born of the marriage has no home of his or her own, the court may, at the request of that spouse, use the home as a share, settling the shares of the other co-dividers with other properties or in cash.
Where the indivisible asset is a home, any co-divider who was living there when the succession was opened and who does not have any other home may apply to have it allocated to his or her share, settling the shares of the other co-dividers with other properties or in cash. If several co-dividers meet these conditions and lay claim to the property, preference is given to the person who offers the highest price.
The application for assignment may be filed no later than the first court session after the court ruling on the admissibility of distribution becomes enforceable.
The asset is valued at its actual value.
In the case of settlement in cash, the payment, together with statutory interest, has to be made within six months of the date on which the assignment ruling enters into force.
The co-divider who has received the asset in his or her share becomes owner upon payment of the settlement in cash, together with statutory interest, within the prescribed time limit. Failure to pay within the time limit results in the assignment ruling becoming null and void by law and the asset being offered for sale at a public auction. The asset may be allocated to another co-divider who meets the requirements and has applied for allocation within the prescribed time limit, without offering it for sale at a public auction, provided the other co-divider immediately pays the valuation price minus the value of his or her share in it. The proceeds are divided among the other co-dividers on a pro rata basis.
Judicial division proceedings may be terminated and the estate wound up by an arrangement reached by the parties and approved by the court.

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

Succession takes place upon acceptance. Prior to the acceptance of succession, the person entitled to inherit assets may administer the estate and bring possessory actions for its preservation.

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

By acquiring the relevant share (undivided share) of the estate of the deceased, each heir or legatee acquires a notional share of the testator's assets and debts included in the estate.
According to the size of their shares, heirs who have accepted succession are liable for the debts encumbering the estate.
An heir who has accepted succession on the basis of an itemised description is liable only up to the amount of the estate received.
Acceptance of succession on the basis of an itemised description has to be declared in writing before the district judge within three months of the date on which the heir learned of the opening of succession. The district judge may extend the deadline by up to three months. Acceptance is entered in the special court registry.
Legally incapable persons, the government and non-government organisations accept succession only on the basis of an itemised description.
If one heir accepts succession on the basis of an itemised description, the other heirs may benefit from it, without prejudice to their right to accept or waive succession.
The itemised description is drawn up in accordance with the Code of Civil Procedure.

The creditors of the estate and the legatees may, within three months of the acceptance of the accession, seek a separation of the deceased's property from the heir's property. Such separation is effected in respect of immovable properties by an entry in the records of the deceased's immovable properties under the procedure of the Cadastre and Property Register Act (Zakon za kadastara i imotniya registar) and, in respect of movables, by an application to the district judge, which is entered in the special register for acceptances and waivers of succession.
The creditors of the estate and the legatees who have sought the separation take precedence over those who have not. Where both creditors and legatees have sought a separation, the former take precedence over the latter.
A writ of execution issued against the deceased may be enforced even against the property of his or her heirs unless they establish that they have waived the succession or have accepted it on the basis of an itemised description. Where the heir has not accepted the succession, the enforcement agent sets the time limit under Article 51 of the Succession Act, communicating the heir's declaration to the relevant district judge so that the declaration can be duly registered.
One specific case in which the heir is liable for the deceased's debts is dealt with in Article 150 of the Counter-Corruption and Unlawfully Acquired Assets Forfeiture (Zakon za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo), which states that any unlawfully acquired assets are also forfeited by heirs or legatees up to the extent received by them.
In such situations the rights of the State under the Act are extinguished upon the lapse of a ten-year prescription period, which starts running from the date of acquisition of the assets. The prescription period is, however, suspended for the duration of proceedings under Section IV of the Act.

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

Transcripts of published wills concerning immovable property and rights to immovable property have to be registered. In the case of universal wills, the existence of an immovable property in the relevant court district is certified by a declaration bearing the beneficiary's notarised signature identifying the immovable properties of which the beneficiary is aware in the relevant court district. The declaration is submitted with the will to the registration judge in the district where the property is located.
The registration judge instructs the registration office at the location of the immovable property to register it by placing the deeds subject to registration in registers accessible to the public.
Two notarised copies of the wills concerning immovable property and rights to immovable property are attached to the application for registration.
Other instruments subject to registration are the contracts for division of immovable properties, the statements of judicial division of such properties, final court decisions substituting such statements and applications by the deceased's creditors or legatees for separation of the deceased's immovable properties.

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. The testator may assign one or more legally capable persons to act as administrators.
At the request of any interested party the district judge for the place where succession is opened may set a time limit for the assignee to accept the appointment. If the time limit expires and the assignee has not accepted the appointment, the assignee is deemed to have waived acceptance.
The district judge may discharge the administrator if the latter is negligent or incapacitated, or acts in a manner incompatible with the trust vested in the administrator.

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

See the answer to the previous question.
In general, if the deceased died intestate or did not appoint an administrator for his or her will, any person entitled to inherit may administer the estate and bring possessory claims for its reservation pending the acceptance of succession.
The heir who has accepted the succession on the basis of an itemised description administers the estate and, in doing so, is bound to exercise the same care as for his or her own affairs. Such an heir may not alienate the immovable properties within five years of the acceptance and movable properties within three years, unless allowed to do so by the district judge; otherwise the heir's liability for the deceased's debts becomes unlimited. Such an heir must account for his or her administration to the creditors and legatees.
Where the person entitled to inherit is of unknown residence or his or her residence is known but that person has not assumed the administration of the estate, the district judge, acting on his or her own motion or at the request of the interested parties, appoints an administrator of the estate.
The administrator must make an itemised description of the estate. The administrator brings and responds to claims regarding the assets and debts of the estate. The administrator must obtain permission from the district judge for repayment of the debts of the estate, the legacies, and sale of the immovable properties.

9.3 What powers does an administrator have?

The administrator must draw up an itemised description of the assets, inviting the heirs and legatees to attend.
The administrator takes over the possession of the estate and administers it insofar as this is necessary to perform the testamentary dispositions.
The administrator does not have the power to alienate assets unless this is needed and allowed by the district judge, who rules after hearing the heirs.
For cases in which an administrator is appointed by the district judge, see the answer under 9.2.

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?

If the testator left a handwritten will, the notary publishes the will, drawing up a statement, describing the state of the will and making a note on its unsealing.
Heirs by law are legitimised by a succession certificate issued by the mayor of the municipality of the last permanent address of the deceased.
Succession certificates are issued only for persons who were subject to registration in the population registry on the date of their death and for whom a death certificate was drawn up.
Where the deceased is not a Bulgarian citizen but is entered in the population register and a death certificate for him or her is not drawn up in the territory of Bulgaria, a duplicate copy or an extract from the death record drawn up by a foreign local civil status registrar has to be presented in order for a certificate to be issued. Where the population register does not contain all the data necessary for issuing the certificate, an official document issued by the competent authorities of the State whose citizenship the person holds has to be presented to certify his or her marital status, particulars of the spouse and lineal relatives of the first degree of consanguinity and collateral relatives of the second degree.
The certificate is issued in accordance with Article 24(2) of the Civil Registration Act and Article 9 of the Regulation on the issue of certificates on the basis of the population registry. The certificate is issued for the heir by law, his or her legal representative or third parties, provided the latter need it to exercise legitimate powers or are explicitly authorised by a notarised power of attorney.
The following documents are required to issue the certificate:
an application using the civil registry (GRAO) information centre form, specifying the details of the heirs of the deceased, which must be filed by an heir or a person authorised by an heir;
a copy of the death certificate (if issued by another municipality);

the identity document of the applicant;
a notarised power of attorney if the application is filed by an authorised representative.

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Succession - Czechia

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?

General ways of drawing up a will

Exceptional circumstances aside, wills are drawn up in writing. With a view to legal certainty, the date is one of the necessary elements of the will. Under Czech law, the joint wills of multiple persons are inadmissible.
According to Czech law, a will may be made in one of the following ways:
a) a will written and signed by the testator in his or her own hand;
b) the testator may also draw up a will other than in his or her own hand if it is self-signed and the testator expressly declares before two simultaneously present witnesses that the document contains his or her last will. Witnesses sign the document and attach a statement that they are witnesses, along with information making it possible to identify them;
c) a testator who is blind makes his or her will before three simultaneously present witnesses in a document that must be read aloud by a witness not writing the will. If the testator has another sensory disability and is unable to read or write, the content of the will must be conveyed to him or her by a means of communication that is understood by the testator and all witnesses;
d) the testator may also draw up a will in the form of a notarial deed.

Drawing up a will in special cases

Special rules apply when wills are made under extreme conditions, especially in life-threatening circumstances.
a) If, on account of unexpected circumstances, the testator's life is in clear and imminent danger or if the testator is in a place where, as a result of an emergency (war, natural disaster, etc.) social intercourse is paralysed to the extent that a will cannot be made otherwise, he or she may make the will orally before three simultaneously present witnesses. An oral will is rendered null and void once two weeks have elapsed since the date on which it was made, if the testator remains alive.
b) If there are justified concerns that the testator could die before making a will before a notary, a will may be recorded before two witnesses by the mayor of the municipality where the testator is situated. Such a will remains valid for three months from the time the testator first becomes able to make a will before a notary. This is what is known as a ‘dorf testament’.
c) A will may be recorded aboard a Czech aircraft or seagoing vessel, where there are serious grounds to do so, in the presence of two witnesses by the person in charge of the aircraft or vessel or by his or her representative. The validity of such a will is again limited to three months.
d) The last will of a soldier may be recorded, if he or she is engaged in armed conflict, by the unit commander or another officer in the presence of two witnesses. As in the preceding cases, such a will remains valid for no more than three months.

Agreement on succession

In an agreement on succession, a testator who is of age and has full legal capacity may appoint an heir or legatee, who may be the other contracting party or a third party. The testator cannot cancel an agreement on succession unilaterally.
A testator may dispose of no more than three-quarters of his or her estate by agreement on succession; a quarter of the estate must remain free, although the testator may make a will regarding that remaining estate.
Spouses may appoint each other as heirs under an agreement on succession. It may be agreed that rights and obligations under an agreement on succession are annulled upon divorce.
An agreement on succession may be drawn up only in the form of an authentic instrument, i.e. as a notarial deed.

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

The Central Register of Wills was established in 2001. From 1 January 2014, following the general recodification of private law in the Czech Republic, the register of wills was replaced by a Register of Legal Acts upon Death. This register is a private computerised list maintained, run and administrated by the Notarial Chamber of the Czech Republic. Instruments on the following legal acts of a testator, taken in case of death, are recorded in the Register of Legal Acts upon Death:
a) a will, codicil, or agreement on succession;
b) a declaration of disinheritance and a declaration stating that the heir defined by statutory hereditary succession will not take possession of the estate;
c) an order for a netting arrangement in respect of a share in succession, unless such an order is contained in the will;
d) the appointment of an administrator, unless appointed in the will;
e) an agreement on the waiver of a succession right;

f) the cancellation of the legal acts referred to in subparagraphs a) to e).

If a notary draws up one of the above instruments in the form of a notarial deed or if a notary has taken receipt of such an instrument not in the form of a notarial deed for notarial safekeeping, he or she enters information on that instrument and on the person drawing it up in the above register by electronic data transmission.

Instruments on a testator's legal acts in case of death which are not notarial deeds are registered only if they are in notarial safekeeping.

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

Reserved share – general information

The mandatory heirs of a testator are his relatives in the descending order. A mandatory heir who *(i)* has not waived a right of succession or a right to a reserved share; *(ii)* is an eligible heir; and *(iii)* has not been effectively disinherited is entitled to a reserved share or to the supplementation thereof if he or she is wholly or partly omitted by the testator in the disposition of property upon death, i.e. he or she does not receive, in the form of a share in succession or a legacy, estate which, by value, is equal to his or her reserved share. The surviving spouse and any relatives in the ascending order are not mandatory heirs. Minor relatives in the descending order must receive at least the equivalent of three-quarters of their statutory share of succession; adult relatives in the descending order must receive at least one-quarter of their statutory share of succession. If the will contradicts this and if the testator has not disinherited a mandatory heir for reasons defined by law, a mandatory heir is entitled to payment of a sum of money equal to the value of his or her reserved share. If the testator is widowed and has two children, the share of succession of each of them is one-half. If one of them is a minor, his or her reserved share comprises three-eighths; for an adult relative in the descending order, the reserved share is one-eighth.

Section 704 of the Civil Code also states: ‘If a family business is to be divided by a court on the division of the estate, the family member involved in running it shall be given priority right.’

Special cases

If a mandatory heir is (consciously) omitted from a will without being disinherited, but has engaged in acts fulfilling any of the statutory reasons for disinheritance, such an omission is treated as disinheritance effected tacitly and rightfully, and in this situation the relative in the descending order has no right to a reserved share.

If a mandatory heir is omitted from a will solely because the testator, in the disposition of property upon death, did not know about him or her (e.g. the testator was under the impression that this relative in the descending order had died, or had no awareness of the fact that a particular person was the testator's relative in the descending order), that mandatory heir is entitled to the reserved share to which he or she has a right by law.

Possibility to waive a right to a reserved share

A mandatory heir may waive the right to a reserved share by formal agreement with the testator drawn up in the form of a notarial deed. A right of succession may also be renounced to the benefit of another person in the same way. Renunciation to the benefit of that other person is valid if he or she becomes an heir.

The waiver and relinquishment of succession (succession may be relinquished by an heir who has not waived succession) should be distinguished from the renunciation of a right of succession or a right to a reserved share under an agreement made with the testator (while he or she is still alive) in the form of a notarial deed. A succession may not be waived or renounced until after the testator's death.

Other restrictions

A testator may, in a will, specify conditions, instructions of time, or orders, or instruct that, after an heir's death, succession is to pass to another heir (entailment). However, such clauses must not be aimed at the manifest harassment of an heir or legatee out of discernible arbitrariness on the part of the testator and must not palpably contradict public policy.

While a testator may not order an heir or legatee to marry, not to marry or to remain in a marriage, he or she may establish a right for someone that lasts until such time as that person marries.

If all heirs (or successors in the line of entailment) are the testator's contemporaries, the sequence in which, according to the testator's disposition of property upon death, these heirs are to succeed from each other (subject to certain conditions) is not restricted. If, at the time of death of the testator, an heir is not yet alive, the sequence of heirs defined by the testator ends when the first such heir assumes succession.

Entailment ends no later than upon expiry of one hundred years from the death of the testator. However, if an heir in the line of entailment is to assume succession after the death of an heir who is the testator's contemporary, entailment ends only after the first such heir in line assumes succession.

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

If the deceased has not made a will or a codicil or has not entered into an agreement on succession, his or her heirs under the law, in six succession classes, inherit. Persons in these classes come into consideration as heirs by stages, based on their class. Heirs from the lower classes exclude heirs from the higher classes, e.g. if the heirs in the first succession class inherit, the heirs in the second class do not inherit anything. Only if the heirs in the first succession class do not inherit does inheritance pass to heirs in the second class. Shares in succession referred to by law apply only if the heirs do not reach a different agreement before a court. If the deceased has not drawn up disposition of property upon death (a will, agreement on succession or codicil), or if the deceased so permits (has not prohibited) in the disposition of property upon death, the heirs may divide up the estate any way they wish by mutual agreement reached before a court.

Succession classes

In the first succession class, the deceased's children and spouse inherit in equal measure. If the deceased and his or her spouse had joint marital assets, the court first settles the joint marital assets so that a portion of these assets accrues to the surviving spouse and a part (typically half) is included in the inheritance. Assets accruing to inheritance are inherited by the deceased's spouse and children in equal measure. The spouse's share does not include any items acquired by the spouse in the settlement of joint assets. In the Czech Republic, the Civil Code makes no distinction between children born in or out of wedlock, or one's own (biological) children and children by adoption.

If any of the deceased's children do not inherit (e.g. if they renounce their share in succession in the testator's lifetime, if they waive succession or if they are survived by the testator), the share in succession pertaining to that child is inherited by that child's children in equal measure. The same rule applies to more distant relatives in the descending order.

If the deceased did not have a spouse, but had children, the deceased's entire estate is inherited by his or her children (or their relatives in the descending order – see above). However, if the deceased had a spouse, but was childless, the deceased's spouse does not inherit the entire estate, but inherits alongside heirs in the second succession class.

In the second succession class, those inheriting are the deceased's spouse, the deceased's parents and persons who lived with the deceased for at least one year before his or her death in a shared household, and therefore took care of the household shared with the deceased, or were dependent on the deceased for their maintenance. All of these persons, apart from the spouse, inherit in equal measure. The deceased' spouse, however, inherits at least half of the estate. Therefore, if the deceased had a spouse and both parents, the spouse inherits half of the estate and each of the parents a quarter.

The spouse and either parent may, in the second succession class, inherit the entire estate. However, if the deceased person had a cohabitant, but neither a spouse nor parents, the cohabitant does not acquire the whole estate, but inherits together with other heirs in the third succession class.
In the third class of heirs, the deceased's siblings and cohabitant inherit in equal measure. If any of the siblings does not inherit, that sibling's share is inherited by his or her children, i.e. the deceased's nephews or nieces (again in equal measure). Any of these heirs may inherit the whole estate.
If inheritance does not accrue to the deceased's siblings or cohabitants, in the fourth succession class it is the deceased's grandparents who inherit in equal measure.
If none of the deceased's grandparents inherits, in the fifth succession class inheritance passes to the grandparents of the deceased's parents (i.e. the great grandparents). The grandparents of the deceased's father receive half of the inheritance, the grandparents of the deceased's mother the other half. The two pairs of grandparents split the half accruing to them in equal measure.
If one member of a couple does not inherit, the released eighth falls to the other member. If an entire couple does not inherit, that quarter accrues to the other couple on the same side. If neither couple on the same side inherits, the inheritance falls to the couples on the other side in the same ratio as that used to split the half of the inheritance which accrues to them directly.
Finally, in the sixth succession class, if none of the aforementioned heirs inherits, the inheritance passes to the children of the children of the deceased's siblings (the children of the nephews and nieces) and the children of the deceased's grandparents (uncles and aunts). If any of the uncles or aunts does not inherit, their share is inherited by their children (the deceased's cousins).
If none of the heirs inherits, the assets fall to the State, which is treated as the heir.

5 What type of authority is competent:

5.1 in matters of succession?

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

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

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

A district court has the jurisdiction to handle all succession proceedings (including the waiver or acceptance of succession, a legacy, or the assertion of a reserved share). In line with a predefined work timetable, the court instructs a notary to manage the succession proceedings. That notary then acts and takes decisions in the proceedings on behalf of the court. Czech law does not permit the parties to succession proceedings to choose their notary.

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)

Jurisdiction

If the competent body is a Czech court, jurisdiction to hear succession proceedings rests with the district court in whose district the deceased's place of permanent or other residence, as registered in the relevant information system, was situated. If the deceased had no permanent or other place of residence on record, the court with jurisdiction is the one in whose district the deceased actually lived (where his or her residential address could be found). If that place cannot be identified either, the competent court is the one in whose district he or she was last found to be present.
If the deceased did not reside in the Czech Republic, the court with due jurisdiction is the one in whose district the deceased owned real estate. If the deceased did not have any real estate in the Czech Republic (and jurisdiction cannot be determined by any of the methods above), the court with due jurisdiction is the one in whose district the deceased died (where the body of the deceased was found).

Initiation of succession proceedings by a Czech court

A court initiates succession proceedings on its own motion as soon as it learns of the death of the deceased. Deaths are notified to the competent court by the registry. However, the court may learn of the death of a deceased person by other means, e.g. from the police, from a healthcare facility or from any heirs.
A court also initiates succession proceedings if it is petitioned to do so by anyone exercising a right to the estate as an heir. If a court discovers that it does not have geographical jurisdiction, it refers the inheritance case to the competent court. Inheritance cases may also be referred to another court in those situations where it would be appropriate to do so, e.g. because the deceased's heirs are resident in the district of another court.

Course of proceedings

First, in its preliminary enquiries the court ascertains information about the deceased, his or her assets and debts, the group of heirs and whether the deceased left a will or other disposition of property upon death. The court typically extracts such information from public lists, from the register of legal acts upon death, from the register of documents on marital assets and, not least, by questioning the person in charge of the deceased's funeral.
Where required by law or for other reasons, the court also takes urgent action to secure the estate, i.e. in particular by taking an inventory and sealing the estate.
Once the preliminary enquiries are over, the court orders a hearing and instructs potential heirs of their right of succession and their right to demand that an inventory of estate assets be drawn up. If any of the heirs seeks an inventory of estate assets, this is ordered by the court.
If the deceased had joint marital assets, the court – further to a communication from the parties – draws up a list of these assets and a list of joint liabilities, and determines the value of the assets. Assets disputed by the parties are disregarded. The surviving spouse then has the opportunity to reach an agreement with the heirs on the settlement of joint marital assets. That agreement stipulates which assets accrue to the estate and which are to remain with the surviving spouse (the principle that the shares of both spouses are equal need not be respected). It is also possible to enter into an agreement under which all joint assets accrue to the surviving spouse, with none of those assets forming part of the estate.
The agreement on the settlement of joint marital assets property between the heirs and the surviving spouse must not contradict the law or the deceased's instructions set out in the disposition of property upon death. Otherwise the court will not approve the agreement.
If the court does not approve the agreement on the settlement of joint marital assets, or if no such agreement is concluded, the court settles joint marital assets itself by adhering to the following rules:
a) the shares of both spouses in the assets to be settled are the same;
b) each spouse reimburses the resources from the joint assets spent on his or her exclusive property;
c) each spouse has the right to demand compensation for resources from his or her exclusive property spent on joint assets;
d) it takes into account the needs of dependent children;
e) it takes into account how each of the spouses cared for the family, especially how he or she cared for the children and the family household;
f) it takes into account how each spouse contributed to the acquisition and maintenance of joint assets.
After settling joint marital assets, the court draws up a list of the estate's assets and liabilities. In doing so, the court draws primarily on information from the heirs and, if an inventory of the estate has been ordered, on that inventory of the estate. Any contentious assets or liabilities are disregarded.
The court appraises the value of assets in the estate, as a rule, according to concurring statements provided by heirs. It is very rare for expert opinions to be commissioned for such valuations.

If the deceased did not leave a disposition of property upon death, the heirs may reach agreement on how to divide the estate in any way they wish. The court confirms the heirs' acquisition of inheritance under that agreement. In the absence of such an agreement, the court confirms their inheritance according to ratios derived from the law. At the request of the heirs, the court splits the estate among the heirs itself.
If the testator, in the disposition of property upon death, provides instructions on how to divide the estate, the court confirms the heirs' acquisition of the estate according to those instructions. Otherwise, the heirs may agree on how to divide the estate between them. Nevertheless, the heirs may agree on differing levels of shares in succession only where this possibility has been expressly conceded by the testator.
If a mandatory heir asserts the right to a reserved share, the other heirs may reach an agreement with that heir on the settlement of the reserved share (a severance payment). Otherwise, an inventory of the estate must be ordered to calculate the reserved share.
Before a decision on the estate is handed down, proof must be provided to the court that due legacies have been resolved and that other legatees have been notified of their right to a legacy.

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

On the death of a testator, his or her heirs have a right of succession. Unless the acquisition of assets from the estate is deferred in keeping with the testator's disposition of property upon death, e.g. due to a condition (an heir is to acquire the inheritance upon graduated from university) or instructions of time (upon expiry of a defined period), one or more heirs inherit upon the death of the testator. The court decides who is to obtain inheritance in this way on the basis of the outcome of succession proceedings. If the testator, in his or her disposition of property upon death, defers the inheritance (by a condition or instructions of time), one or more principal heirs inherit on the death of the testator, while one or more subsequent heirs inherit on fulfilment of the condition (the passing of a given period). The court decides on the passage of inheritance from principal heirs to subsequent heirs in separate proceedings.
Inheritance decisions are issued in the name of the court by a notary commissioned by the competent district court to execute acts in succession proceedings. When executing the acts of a judicial commissioner in succession proceedings, a notary, a notary clerk and a candidate have all the privileges of a court as a public authority in the exercise of justice.
A legatee acquires a right to a legacy on the death of the testator and must be notified of this right before the end of succession proceedings. Due legacies must be settled before the end of the succession proceedings.

Renunciation of a right of succession, waiver, relinquishment

A right of succession may be renounced in advance by agreement with the testator in the form of a notarial deed.
After the death of the testator, an heir may waive succession by an explicit declaration made to the court within one month from the date on which the heir is advised of this right. An heir residing abroad has three months from such notification of advice in which to waive succession. This time limit may be extended for serious reasons, but cannot be extended on expiry of the time limit (the deadline cannot be waived). After this deadline, it is accepted that the heir has not waived succession.
A mandatory heir may waive succession while reserving the option of a reserved share, e.g. he or she may waive inheritance derived from the disposition of property upon death without forgoing the right to a reserved share. This is, in some respects, an exception to the general rule that an heir cannot be absolved of an obligation imposed by the disposition of property upon death by waiving the succession derived from that disposition and, yet, at the same time, assert his or her right as a statutory heir – he or she may become an heir by means of the disposition of property upon death or may waive such succession. A declaration of waiver or acceptance cannot be withdrawn.
Succession may not be waived by a person who, through his or her actions, makes it clear that he or she has no intention of waiver, especially by disposing of assets that belong to the estate.
Succession may also be relinquished to the benefit of another heir. A mandatory heir who relinquishes succession also forgoes the right to a reserved share; this decision is also effective for relatives in the descending order. The relinquishment of succession to the benefit of another heir takes effect if the other heir consents to this act. An heir who relinquishes succession is not absolved, by that act, of the obligation to comply with orders, instructions relating to a legacy or other measures which, according to the testator's will, can and should be fulfilled only in person.

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

Heirs can choose whether or not to exercise their right to demand an inventory of the estate. Heirs who do not seek an inventory of the estate are then liable for the deceased's debts in full. If multiple heirs do not exercise the right to an inventory, they are jointly and severally liable. An heir who does not demand an inventory is liable for all debts even if the court draws up a list of assets for other reasons (e.g. because another heir exercises the right to the inventory).
If an heir demands an inventory, the court carries out an inventory of the estate. An heir who demands an inventory is liable for the deceased's debts only up to the value of the inheritance received. If multiple heirs assert this right, they are liable jointly and severally, but each has this liability only up to the value of the inheritance he or she receives.
In some cases, the court orders an inventory of the estate even if no heir requests this, primarily for the protection of minor heirs, heirs whose residence is unknown, and the testator's creditors.
In certain cases, the court may decide that the inventory of the estate will be replaced by a list of estate assets drawn up by the administrator, or by a joint declaration on estate assets prepared and signed by all heirs.

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

The registration of rights in the property register is governed by Act No 256/2013 on the property register (the Cadastral Act).
The following are registered in the property register:
lands in the form of parcels;
buildings which are assigned a building number or land registry reference number, unless part of land or a building right;
buildings which are not assigned a building number or land registry reference number, unless part of land or a building right, provided that they are the principal structure on the land and are not classified as ‘small structures’;
units defined in accordance with the Civil Code;
units defined in accordance with Act No 72/1994 regulating certain co-ownership relations connected with buildings and certain ownership relations connected with flats and non-residential premises and amending certain laws (the Housing Ownership Act), as amended;
a building right;
waterworks.
Rights in rem acquired through inheritance are entered in the property register pursuant to a decision or authentic instrument of succession issued in a Member State and by a certificate issued by a court or competent authority of the Member State of origin or a European Certificate of Succession (‘instruments’).
The land registry in whose district the immovable property is situated is locally competent to carry out registration procedure.
The real estate must be indicated in the instruments for the registration of rights in the property register (the inheritance decision, authentic instrument, and/or European Certificate of Succession) in accordance with Section 8 of Act No 256/2013:

Land is identified by a parcel number and an indication of whether it is a building plot, and by the name of the cadastral community in which it is situated.
Land subject to simplified registration is identified by the parcel number according to the former land register, stating whether this is a parcel number assigned under the land register, the allocation plan, the unification plan or the property register, and by the name of the cadastral community in which it is situated.
A building which is not classified as a part of land or a building right is identified by the parcel number of the land on which it has been built, the house number or land registry reference number (if no number has been assigned, the method of building use is indicated), and by the name of the borough in which it is situated.
A unit is identified by the designation of the building in which it is demarcated or the designation of the land or building right, if the building in which it is demarcated is classified as a part of such land, by the unit number and the name of the unit, and where appropriate by the indication that it is an unfinished unit.
A building right is identified by the parcel number, an indication of whether it is a building plot, and by the name of the cadastral community in which it has been established.
A waterwork is identified by the parcel number, an indication of whether it is a building plot, by the name of the cadastral community and by the method of use.
Instruments submitted for the registration of rights in the property register must meet the requirements of an instrument intended for property register purposes; its content must justify the proposed registration of the right, and the proposed registration of the right must show continuity with previous entries in the property register.
The instruments must indicate the heirs or other beneficiaries by name, residential address, personal identity number or date of birth (or, if a legal person, by name, registered office and registration number, if assigned). The instrument must indicate the shares according to which each heir is acquiring rights to the real estate, and where appropriate which rights in rem are being established, and the corresponding beneficiaries and liable parties. In succession proceedings, besides the right of ownership, a building right, easement, lien, future lien, sublien, right of first refusal, future life interest, accessory co-ownership, trust fund, and prohibition of transfer or encumbrance may also be established.
Where the right that is to be entered in the property register on the basis of the given instrument concerns only part of a land parcel, the instrument must be accompanied by a survey sketch defining the part of the land in question. The survey sketch is treated as part of the instrument.

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?

A testator may appoint an administrator and/or executor in his disposition of property upon death.
The court appoints an administrator in order to carry out the last will on a proposal from an heir who does not wish to spend time and effort on carrying out the last will. That proposal must contain the general particulars of a submission, i.e. it must clearly indicate the court to which it is addressed, who is making it, what matter it concerns and what it is pursuing, and must be signed and dated.
A court may also appoint an administrator on its own motion if:
a) no executor has been appointed, or the executor refuses to administrate the estate or is obviously unfit to administrate the estate, and if the heirs are unable to administrate the estate properly;
b) it is necessary to draw up a list of assets pertaining to the estate; or
c) there are other serious reasons to do so; or
d) the former administrator has died, has been dismissed, has resigned or has had his or her legal capacity restricted and the need for someone to carry out these duties remains.

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

The executor (if appointed by the testator) is responsible for carrying out the testator's last will. If an administrator is not appointed, the executor is also responsible for the administration of the estate.
If both an executor and an administrator are appointed, the administrator administrates the estate according to the executor's instructions.
If an administrator is appointed but an executor is not, the administrator administrates the estate. If proposed by an heir, the court also orders the administrator to see to the testator's last will.
If neither an administrator nor an executor is appointed, all heirs are responsible for the joint administration of the estate. Heirs may also agree that the estate will be administrated by just one of them.

9.3 What powers does an administrator have?

The administrator is responsible purely for the administration of the estate. This means that he or she does only what is necessary to maintain the assets. In doing so, he or she may exercise all rights relating to the assets under administration. The administrator may transfer items from the estate or or use them as collateral if required in the interests of preserving the value or substance of the assets under administration, or for consideration. Under the same conditions, he or she may change the purpose of the assets under administration.
The administrator of the inheritance or the executor may take any action beyond the scope of simple management if the heirs give consent. If the heirs fail to reach agreement, or if an heir is classified as a person under special protection, court approval is required.
The executor is responsible for duly carrying out the testator's last will with due diligence. He or she is entitled to exercise all rights necessary to perform his or her tasks, including the right to defend the validity of the will in court and to plead the incompetence of an heir or legatee, and to ensure that all of the testator's instructions are executed. In the will, the testator may set additional duties for the executor.

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?

Succession proceedings end with the issuance of a succession order expressly declaring rights and obligations related to the estate. Parties have the right to appeal against this order within fifteen days of the date on which it is served. The ruling becomes final if no appeals are lodged in that time limit. The final order serves as proof of the rights and obligations therein. The order has the status of an authentic instrument.
Before the final end of the proceedings, the court may issue official confirmation of facts known from the case file. This confirmation is also an authentic instrument.

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Succession - Germany

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?

A will can be drawn up in one of two forms: as a handwritten will or as a public will.

A handwritten will can only be drawn up by persons who are 16 years of age or more, and must be handwritten from start to finish and also be signed. If the will has been typed with a typewriter or a computer, if the signature is missing or if it has been dictated (e.g. onto tape), the will is invalid and, as a result, only the legal heirs are able to inherit from the estate if no other valid will giving an alternative appointment of an heir exists. For reasons of proof, it is also very important that the testator sign with his or her full name (i.e. first name and last name) so that there can be no confusion as to who has drawn up the will. Finally, it is strongly recommended to include the time and place in the will to show when and where this official written record was produced. This is important because an earlier will can be revoked — in whole or in part — by a new one. If the date is missing from one or possibly even both of the wills, it is often impossible to tell which one is more recent and to be regarded as valid.

Married couples and registered partners are also permitted to draw up a joint handwritten will. In this case, the handwritten will that has been produced by one or both of the spouses or partners must be signed by both of them together.

If you want to avoid the risk of making mistakes when drafting your will, you should draw up a public will (also called a ‘notarial will’). This involves verbally relaying your last will and testament to a notary who then records it in writing or drafting it yourself and handing it over to the notary in writing.

In order for a contract of inheritance to be concluded, both parties must appear before a notary at the same time.

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

To counter the risk of a handwritten will being hidden away or getting lost or forgotten about after a person’s death, it is often advisable (but not compulsory) to lodge the will with the local court (*Amtsgericht*) – or in Baden-Württemberg with the notary’s office (*Notariat*) up to the end of 2017 – so that it can be kept in safe custody. A notarial will is always kept in safe custody. The same applies to a contract of inheritance, unless the contracting parties specifically state that it is not to be placed in official custody; in the latter case, the document is deposited with the notary instead. Wills and inheritance contracts that are kept in safe custody are opened upon the death of the person who made the dispositions *mortis causa* contained therein (to whom the law refers as the ‘testator’).

Since 1 January 2012, documents kept in safe custody have been registered electronically in the Central Register of Wills at the Bundesnotarkammer [Federal Chamber of Notaries]. Only the details required to locate the disposition *mortis causa* in the event of death are recorded (safe custody identification details). The content of the disposition *mortis causa* is not recorded in the Central Register of Wills. In the case of dispositions *mortis causa* that were drawn up prior to this date and placed in safe custody, the relevant details of the registry offices have been transferred to the register.

As the registry authority, the Federal Chamber of Notaries is notified of all domestic deaths and, for the purpose of opening any dispositions *mortis causa* held in safe custody, informs the depository of the death and informs the competent probate court (*Nachlassgericht*) of whether and which dispositions are registered and where these are held in safe custody.

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

The next of kin can be disinherited by means of a will. However, a situation in which the surviving spouse, children and children’s children or parents were to receive no inheritance at all, even though they would have been the legal heirs if the testamentary disposition had not actually existed in the first place, has always been regarded as unjust. Due to their officially recognised and legally established acceptance of mutual responsibility, the same applies to surviving registered same-sex partners. For this reason, the law grants this narrowly defined group of people something called a ‘compulsory portion’. The beneficiaries of a compulsory portion are entitled to claim a monetary payment from the heirs that is equal to half the value of the legal portion.

Example: The testator is survived by her husband (with whom she lived under the property regime of community of accrued gains) [whereby each spouse retains ownership of his or her own property but the increase in the combined net worth of the spouses during the marriage is distributed equally] and a daughter. In her will, the testator named her husband as the sole heir. The estate is worth EUR 100 000. The fraction for determining the daughter's compulsory portion is ¼ (whereas her legal portion is ½; the same as that of the husband who lived with the testator under the property regime of community of accrued gains). To calculate the sum of money to which she is entitled, the compulsory portion fraction must be multiplied by the value of the estate at the time of inheritance. This means that the daughter can claim a compulsory portion amounting to EUR 25 000 (¼ × EUR 100 000) from the husband.

Testators are not able to obstruct a claim to this compulsory portion by including beneficiaries of a compulsory portion in their wills but only allocating them less than half of their legal portion. In such cases, the beneficiary of the compulsory portion is entitled to a supplementary amount to bring their compulsory portion up to half the legal portion (compulsory portion adjustment claim).

Example: In his will, the testator named his wife (with whom he lived under the property regime of community of accrued gains) and his daughter as heirs such that they stand to inherit ⅞ and ⅛ of his estate respectively. The estate is worth EUR 800 000. The fraction for determining the daughter's compulsory portion is ¼ (= EUR 200 000). Given that she has been included in the will and so already stands to inherit EUR 100 000 (⅛ of EUR 800 000), she is thus only entitled to a supplementary amount to cover the shortfall (EUR 100 000).

Compulsory portion claims must be asserted within three years of any beneficiaries of the compulsory portion becoming aware of the inheritance and of the disposition by which they are detrimentally affected, and certainly within no more than thirty years of the inheritance.

Heirs can ask for the compulsory portion claim to be deferred if immediate satisfaction of the claim would severely affect them in an unfair way. The example cited in the legislation is a scenario in which the family home would otherwise have to be sold. Nevertheless, there must still be due regard for the interests of the beneficiary or beneficiaries. Deferment means that the compulsory portion does not have to be paid immediately. It is up to the court to decide, on a case-by-case basis, by how long the compulsory portion may be deferred and whether security has to be pledged in respect of the compulsory portion claim.

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

If there is no will or contract of inheritance, the rules of legal succession apply.

Under German law of succession, only relatives are classed as heirs, i.e. people with the same parents, grandparents or great-grandparents as the testator, as well as people who share more remote common ancestors with the testator. According to this definition, relations by marriage are not considered to be related to the testator at all and so are excluded from legal succession, e.g. mother-in-law, son-in-law, stepfather, stepdaughter, aunt by marriage, uncle by marriage, etc.; this is because they do not share any common ancestors with the testator.

The family relationship can also result from adoption (as a child), as this process creates a fully-fledged family relationship in law between the child and the adopter as well as the latter's relatives, along with all the associated rights and obligations. Consequently, adopted children generally have the same rights as biological children (special conditions may apply if 'children' over the age of majority are adopted). Spouses are an exception to the principle of relative-only inheritance.

Although they are not usually related to one another and so do not share any common ancestors, they still have a right of their own to an inheritance from their spouse. If the spouses are divorced, there is no right to an inheritance. Under certain conditions, this also applies to spouses who are not yet divorced but live separately.

Under the law of succession, registered partners have the same inheritance rights as spouses. By contrast, there is no legal right to an inheritance for other forms of cohabitation.

The law of succession for relatives:

Not all relatives have equal inheritance rights. The law divides them up into heirs of various different degrees:

1st degree

Heirs of the 1st degree only include the descendants of the deceased, i.e. the children, grandchildren, great-grandchildren, etc.

Extra-marital children are the legal heirs of their mothers and fathers and of their respective relatives. An exception applies to cases of inheritance in which the testator died before 29 May 2009, if the extramarital child was born before 1 July 1949.

Provided that someone can be found who belongs to this group of very close relatives, all the relatives that are more distant receive nothing and have no share in the inheritance.

Example: The testator has one daughter and numerous nephews and nieces. The nephews and nieces inherit nothing.

The children's children (i.e. grandchildren, great-grandchildren, and so on) can usually only inherit something if their parents have already died or have themselves waived the inheritance.

Example: The deceased is survived by one daughter as well as three grandchildren by a son who has himself already passed away. The daughter receives half the inheritance while the grandchildren have to share the other half between them — that is, the half that would otherwise have gone to their father. This means that each grandchild receives of the inheritance.

2nd degree

Heirs of the 2nd degree are the parents of the deceased along with their children and children's children, i.e. the siblings, nephews and nieces of the testator. Once again, children of the parents of the testator only inherit if the parents of the testator are already deceased. They then inherit the portion due to their deceased father or deceased mother.

Relatives of the 2nd degree can only inherit if there are no relatives of the 1st degree.

Example: The testator is survived by a niece and a nephew. The sisters and parents of the testator have already passed away. The niece and the nephew thus each inherit one half of the estate.

3rd and subsequent degrees

The 3rd degree category encompasses the grandparents plus their children and children's children (aunt, uncle, cousin, etc.), while the 4th degree covers the great-grandparents plus their children and children's children, and so on. Legal succession is essentially based on the same rules as for the aforementioned degrees. However, as of the 4th degree, if the offspring of the grandparents have already passed away, it is no longer the descendants of those offspring that are next in line; rather, the persons who are the closest relatives now become the sole heirs (at this point there is a switch from the parentelic system of succession [which involves working down each line (parentela) descended from an ancestor until an heir is found] to the degree of relationship system [which involves identifying the closest relative based on degrees of kinship]).

The following always applies: only one relative of the previous degree needs to be alive in order for all the possible heirs of the subsequent degree to be excluded.

Spouses and registered partners

Regardless of the respective matrimonial property regime that applied, the surviving spouse or registered partner are classed as legal heirs and are entitled to ¼ of the estate along with any descendants and to ½ of the estate along with any relatives of the 2nd degree (i.e. parents, siblings, nephews or nieces of the testator), as well as any grandparents.

If the spouses or registered partners lived under the 'property regime of community of accrued gains' (which is the default regime, unless the spouses agreed to a different property regime as part of a pre-nuptial or post-nuptial agreement), the aforementioned portion increases by ¼. The same applies to registered partners.

If there are no relatives of the 1st or 2nd degree and no grandparents either, the surviving spouse/registered partner receives the entire inheritance.

Example: The testator is survived by his wife (with whom he lived under the property regime of community of accrued gains) and by his parents. The wife receives ¾ (½ + ¼) and the parents — as heirs of the 2nd degree — each receive ⅛ of the estate. In addition, where the other heirs are relatives of the 2nd degree, as here, or grandparents, the wife is entitled to what is known in German as the '*Großer Voraus*', which is a preferential right that in most cases covers all household effects and wedding presents (where the other heirs are relatives of the 1st degree, a surviving spouse inheriting as a legal heir is entitled to these effects only in so far as he or she needs them in order to run a proper household).

The State's legal right of inheritance:

If there is no spouse or registered partner and no relative of the testator can be identified, the State becomes the legal heir. Its liability is always limited to the size of the estate.

Further information, including on disposition *mortis causa*, the right to a compulsory portion and legal succession, can be found in the booklet *Erben und Vererben* [Inheriting and bequeathing] published by the Federal Ministry of Justice, which can be accessed online – exclusively in German – from https://www.bmj.de/SharedDocs/Publikationen/DE/Erben_Vererben.pdf;jsessionid=192CD76974962294D2DFB24EF4ACD77A.2_cid297?__blob=publicationFile&v=40.

5 What type of authority is competent:

5.1 in matters of succession?

In principle, it is the probate court of the local court at the testator's last usual place of residence in Germany that is competent to deal with matters of inheritance.

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

An inheritance is waived by submitting a declaration to the probate court; this declaration must be made in the presence of and recorded by the probate court or be submitted after certification by a notary (for further details, see below).

A declaration of acceptance does not have to be submitted in any particular form and there is no need for acknowledgement of receipt. Merely exceeding the deadline for the waiver is sufficient to constitute acceptance.

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

A legacy or bequest is accepted or waived by submitting a declaration to the person charged with the legacy/bequest. This can be the heir or a legatee, i.e. for a sub-legacy.

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

German law of succession makes no provision for declaring the acceptance or waiver of a compulsory portion.

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)

Opening of the will:

A disposition *mortis causa* submitted to the probate court or taken from safe custody is officially opened by the probate court following the death of the testator. The heirs will be officially notified of this.

Proceedings for the issue of a certificate of inheritance:

The certificate of inheritance is issued by the probate court and specifies who the heir is, the extent of his or her right of inheritance and, where applicable, may also stipulate subsequent succession or the execution of the will.

The probate court issues the inheritance certificate on request. The applicant must demonstrate that the details required by law are all accurate or provide a statutory declaration to show that there are no grounds to doubt the accuracy of the details. The applicant can make a statutory declaration by appearing before a notary or a court, unless the law of the federal state concerned stipulates that only notaries are competent to deal with this matter.

Issue of a European Certificate of Succession:

International Probate Administration Law [*Internationale Erbrechtsverfahrensgesetz, IntErbRVG*] sets out the procedures for the European Certificate of Succession. The European Certificate of Succession is a certificate of inheritance that is valid in almost all European Union countries (with the exception of Ireland and Denmark). It is also issued at the request of the probate court in the form of a notarised copy with a restricted validity period. The main aim of the certificate is to simplify the settlement of estates within the EU.

Distribution of the assets:

If there are multiple heirs for the estate, it becomes the joint property of the community of heirs. As a result, the coheirs are only permitted to dispose of individual items of the estate by acting jointly, e.g. for the purpose of selling the testator's car if it is no longer required. They must also manage the inheritance jointly. This often causes major difficulties, particularly if the heirs live far apart and cannot come to an agreement. This 'forced community' is usually very inconvenient and, in principle, each heir can ask for the community to be dissolved by requesting the partitioning of the estate. The most important exception in this regard is when the testator has stipulated in his or her will that the estate is not to be divided up for a set period of time, e.g. so that a family business can continue operating.

If the testator has appointed an executor, he or she is then responsible for partitioning the estate. Otherwise, partitioning the estate is the responsibility of the heirs. For this purpose, they are allowed to seek assistance from a notary. If the heirs fail to reach an agreement despite having appointed a notary to act as an intermediary, the only remaining option is to take legal action.

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

For details of legal succession, please see above.

If the deceased has left a will, this takes priority over the rules of legal succession. Consequently, only those persons named in the will inherit from the estate if the testator gave instructions about the entire estate in his or her will. For details of who is entitled to a compulsory portion, please see above.

On the death of the testator, the inheritance legally passes to the heir or heirs (principle of automatic acquisition of the inheritance). However, heirs are entitled to waive their inheritance (see below).

The testator may also leave a legacy or bequest in his or her will, e.g. by allocating individual items or specific sums of money to particular people. In such cases, the recipients of the legacy/bequest ('legatees') are not classed as heirs but have a claim against the defendant(s) for whatever it is that has been specifically left for them in the will.

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

Waiver of the inheritance:

The heirs are not liable for the liabilities of the estate if they waive their inheritance by the stipulated deadline. As a general principle, the respective heir must waive his or her inheritance within six weeks of having been notified of the opening of the inheritance and the basis for his or her status as an heir, which involves making an official declaration to the probate court. This can either be done in the presence of and recorded by the probate court or be submitted after certification by a notary. In the case of the latter, it is sufficient to submit a letter, although the signature of the heir must be certified as true by the notary. The act of either waiving or accepting the inheritance is usually binding.

Liability if the inheritance is accepted:

If the heirs accept their inheritance, they essentially 'step into the shoes' of the testator from a legal perspective. This means that they also inherit the person's debts and, in principle, must also use their own assets to cover them.

However, the heirs are able to limit their liability for the inherited debts to what is known as the 'legal estate' ('*Erbmasse*'). This means that any creditors to whom the deceased was indebted can recover their losses from the legal estate but the heirs' own assets remain protected from third parties.

The heirs can obtain this limitation of liability in one of two ways: they can either submit an application to the probate court to request administration of the estate on behalf of the creditors or they can request estate insolvency proceedings by submitting an application to the local court that is competent to act as an insolvency court. If the estate is not even sufficient to cover the costs of administration of the estate on behalf of the creditors or to cover the costs of estate insolvency proceedings, the heirs can still obtain a limitation of liability. If claims are asserted by a creditor, the heirs can plead insufficient assets in the estate. The heirs can then refuse to settle the liabilities of the estate in so far as the size of the estate is insufficient to cover them.
However, the heirs are required to hand over what there is of the estate to the creditors. If the heirs simply wish to avoid being confronted with debts they were not anticipating, all they need to do is initiate a public notice procedure ('*Aufgebotsverfahren*'), whereby the heirs can submit an application to the probate court requiring all the creditors of the testator to notify the court — by a set deadline — of the outstanding debt owed to them by the testator. If a creditor fails to file his or her claims on time, he or she must be satisfied with whatever is left of the inheritance at the end. The public notice procedure may also clarify the situation for the heirs by revealing whether there are grounds to put the estate into official administration by applying for administration of the estate or insolvency of the estate.

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

According to the principle of automatic acquisition (see point 7), the heir of the owner of a piece of land acquires ownership of that land the second the testator dies. This will result in the land register becoming incorrect, as the testator will still be listed as the owner. It is necessary to submit an application for the rectification of the land register along with evidence to show that it is incorrect so that the heir of a property owner can also be formally entered in the land register as the owner. In order to apply for a rectification of the land register following the death of the registered owner, the applicant must thus submit **proof of their status as an heir** to the land registry office.
In the strictly formalised land register process, this proof can only be provided by submitting a **certificate of inheritance or European Certificate of Succession** in which the applicant is identified as the heir.
If succession is based on a disposition *mortis causa* set out in a **public document** (a notarial will or contract of inheritance), it is sufficient to present the land registry office (*Grundbuchamt*) with the disposition and the official record of its opening. No certificate of inheritance or European Certificate of Succession is then required.
If a piece of land is the subject of a **legacy or bequest**, there is no automatic acquisition of ownership under German inheritance law. However, the legatee may request the heir to transfer ownership to him or her. A notarial deed must be presented for the acquisition of ownership, which deed must show the transfer of ownership of the land in question from the heir to the legatee. If foreign inheritance law applies, for example because the testator had his or her last usual place of residence abroad and did not make a choice of applicable law, the presentation of a certificate of inheritance or a European Certificate of Succession may exceptionally suffice even if the allocation was only made by way of a legacy or bequest. Other documents may also be required depending on the nature of the case concerned. For instance, in order for a trading company to be registered as the heir, proof of power of representation must be provided (e.g. official excerpt from the commercial register).

8.1 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 German law of succession, the administration of the estate on behalf of creditors can be used to prevent debts being enforced against the heirs' own assets. The probate court may only order that the estate be placed into administration at the request of an authorised person (heir, executor, creditor of the estate, purchaser of the total inheritance or subsequent heir).
The administrator is an officially appointed body. Although responsible for administering the total assets of somebody else, it still has the status of a party in its own right in the event of a legal dispute. It carries out its official duties in a private capacity when administering the other person's assets with a view to satisfying the interests of all the parties involved (heirs and creditors). The estate administration process that the administrator is entitled — and indeed — required to perform is not merely aimed at maintaining and increasing the estate, but primarily at satisfying the creditors of the estate. The main duty of the administrator is to ensure that the liabilities of the estate are cleared.

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

Aside from the actual heirs, the (insolvency) administrator (see above) and the executor (see below), relevant powers can also be granted to a curator of the estate.
The probate court officially orders curatorship of the estate if there is a current need for this when the identity of the responsible heir is uncertain or if it is not known whether he or she has accepted the inheritance. Curatorship of the estate is aimed at safeguarding and maintaining the estate in the interests of unknown heirs.
The probate court sets the curator's scope of responsibilities in accordance with what is required in each individual case. This scope may be quite broad or may simply focus on the administration of individual items of the estate. The curator of the estate is usually given responsibility for identifying the unknown heirs and for safeguarding and maintaining the estate.
In principle, the curatorship of an estate does not aim to satisfy creditors of the estate because it is primarily instigated to protect the heirs. By way of an exception, the duties of the curator may also include using the resources of the estate to settle liabilities of the estate if this is necessary for its proper administration and maintenance or for the purpose of averting loss or damage, particularly any costs that could be incurred as a result of unnecessary legal disputes.

8.3 What powers does an administrator have?

A testator is permitted to designate the person or persons who will act as executor(s) in his or her disposition *mortis causa*. He or she can also authorise a third party, the executor or the probate court to designate the person or persons who will act as executor(s). The obligations of the executor commence as soon as the designated person accepts their appointment to this role.
Under the law, it is the duty of the executor to execute the testamentary dispositions of the testator. If there is more than one heir, the executor is responsible for partitioning the estate between them.
The executor is required to administer the estate. In particular, he or she is entitled to take possession of the estate and dispose of the items of the estate. In this case, the heirs have no power of disposition over any item of the estate that is subject to administration by the executor. The executor is also entitled to take on liabilities in the name of the estate provided that this is necessary for its proper administration. He or she is only entitled to dispose of items free of charge if there is a moral obligation to do so or out of respect for common decency.
However, the testator is able to restrict the powers of the executor as he or she sees fit compared to what has been laid down by the legal provisions. He or she also has the authority to define the period for executing the will. He or she might, for example, merely go so far as to allow the executor to handle the estate and partition it in the short term. On the other hand, he or she might equally decide to provide instructions in his or her will or contract of inheritance to make the estate subject to long-term execution. In principle, long-term execution can be mandated for a maximum of 30 years, starting from the actual date of inheritance. Nevertheless, the testator can provide instructions for the administration to continue until the death of the heir or the executor, or until the occurrence of a specified event affecting one or other of them. In such cases, the execution of the will can actually take longer than 30 years.

9 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?

A certificate of inheritance or a European Certificate of Succession is generally required to prove that the heir holds a right of inheritance, e.g. if an heir wishes to have a piece of land or an account held in the name of the testator transferred to his or her own name. If a public will exists (see above), it may not be necessary to present a certificate of inheritance or European Certificate of Succession in such cases.

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Succession - Estonia

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

The testator may draw up the disposition of property in the event of death by way of a will or agreement as to succession. The will may be notarial or domestic. A testator may revoke the will or a part of the will at any time by a later will or agreement as to succession. This does not apply to a reciprocal will of spouses, as special rules govern changes to and revocation of such wills.

Notarial wills

A notarial will is a notarially authenticated will or a will that was prepared by the testator and deposited with a notary in a sealed envelope for storage.
In a notarial will, a notary notarises a will he or she has prepared according to the testator's testamentary disposition, or the testator prepares the will and submits it to the notary for notarisation. A notarial will must be signed by the testator in the presence of the notary.
A notarially authenticated will may also be drawn up by a juvenile of at least 15 years of age. Such a juvenile testator does not require consent from his or her legal representative.
In the case of a will deposited with a notary for safekeeping, the testator personally hands the notary his or her testamentary disposition in a sealed envelope, declaring to the notary that it is his or her will. In such a case, the notary draws up a notarial deed regarding the fact that the will has been deposited, and the deed is signed by the testator and the notary. The testator may at any time retrieve a will deposited with a notary. In such a case, the notary draws up a notarial deed concerning the fact that the will has been retrieved, and the deed is signed by the testator and the notary.
There are no time limits on the validity of notarial wills, i.e. they remain in force until changed or revoked.

Domestic wills

A domestic will is either a will signed in the presence of witnesses or a holographic will.
The text of a domestic will signed before witnesses does not have to be prepared by the testator (nor does it have to be handwritten), but it must be signed in the presence of at least two witnesses of active capacity, and the date and year on which the will was made must be recorded in the will. The witnesses must be present at the signing simultaneously. The testator must notify the witnesses that they have been called as witnesses to the making of a will and that the will represents his or her testamentary disposition. The witnesses are not required to know the content of the will. Immediately after the testator has signed the will, the witnesses also sign the will. The witnesses confirm with their respective signatures that the testator has signed the will him or herself and that to the best of their understanding the testator has active capacity and the capacity to exercise will. A person may not serve as a witness if his or her ascendants or descendants, siblings and their descendants, and spouse and his or her ascendants and descendants benefit from the will being made.
A holographic domestic will must be written by the testator in his or her own handwriting from start to finish (it may not be typed, printed out or otherwise mechanically prepared), and the date and year on which the will was made must be recorded in the will. A holographic will is to be signed personally by the testator.
The testator may keep a domestic will or give it to another person for safekeeping.
A domestic will becomes invalid six months after it is made if the testator is still alive. If the domestic will does not specify the date or year on/in which it was made, and it is not possible to determine in any other manner the time at which it was made, the will is void.

Reciprocal will of spouses

A reciprocal will of spouses is a will made jointly by spouses, in which they name each as the other's heir or make other dispositions of the estate in the event of their death.
In a reciprocal will of spouses in which each indicates the other spouse as sole heir, the spouses may designate to whom the share of the estate of the surviving spouse will be transferred upon death.
A reciprocal will of spouses must be notarially authenticated. The notary prepares this type of will in accordance with the testamentary disposition of the spouses, and the spouses must sign it in the presence of the notary.
A disposition in a reciprocal will of spouses may be revoked by either spouse while both spouses are alive. A will whereby the said disposition is revoked must be notarially authenticated. The disposition shall be considered revoked when the other spouse has received a notice, transmitted by notarial procedure, regarding revocation of the disposition. After the death of one spouse, the surviving spouse may only revoke his or her disposition if he or she waives the share of the estate willed to him or her on the basis of the reciprocal will.
A reciprocal will of spouses becomes void if the marriage terminated prior to the death of the testator. It also becomes void if the testator had, before his or her death, filed for divorce in a court or provided written consent for a divorce, or was entitled to seek annulment of the marriage and had filed such a request in court.

Agreements as to succession

An agreement as to succession is an agreement between the testator and another person, whereby the testator names the counterparty or another person as heir and specifies a legacy, testamentary obligation or testamentary direction. An agreement as to succession may also be concluded by the testator and his or her intestate heir concerning the fact that the intestate heir waives succession.

An agreement as to succession may also contain unilateral dispositions issued by the testator; in such a case, the provisions specified in the will are applied in regard to the dispositions.

Agreements as to succession must be prepared and authenticated by a notary. Agreements as to succession are signed in the presence of a notary.

An agreement as to succession or disposition contained therein may be cancelled or revoked while the parties are still alive by a notarially authenticated agreement between the individuals or by a new agreement as to succession.

If an agreement as to succession was entered into under circumstances which give grounds for cancellation of the agreement pursuant to the General Part of the Civil Code Act, cancellation of the agreement may also be claimed after the death of the testator by the person entitled to succeed in the event of invalidity of the agreement as to succession or a disposition contained therein.

In addition, it is possible to withdraw from the agreement as to succession. The testator may withdraw from the agreement as to succession if the right of withdrawal has been agreed in the agreement as to succession. Withdrawal may also occur if the entitled person has committed a crime against the testator, his or her spouse or ascendant or a descendant of the testator, or if the counterparty is in intentional breach of his or her right arising from legislation to provide maintenance support to the testator. The testator also has the right of withdrawal in a situation where a party to the agreement as to succession who is obliged to discharge recurring obligations to the testator during his or her lifetime – above all, ensuring maintenance support – intentionally and in material extent violates such an obligation. Withdrawal from the agreement as to succession takes place by way of making a notarially authenticated declaration to the counterparty. In the case of a reciprocal agreement as to succession, if the right of withdrawal is agreed upon in the agreement as to succession, the entire agreement becomes void if one party withdraws, unless otherwise specified in the agreement as to succession. The right of withdrawal from a reciprocal agreement as to succession is extinguished upon the death of one of the parties. After the death of a party, the surviving party to the agreement as to succession may only revoke his or her disposition if he or she waives the estate allocated to him or her under the agreement as to succession.

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

Notarial wills and agreements as to succession are always registered in the succession register on the working day following the notarisation of the notarial deed. In addition, notaries are required to register in the succession register all changes to agreements as to succession, agreements on termination of agreements as to succession and declarations of withdrawal of agreements as to succession. Violation of the registration obligation does not affect the validity of the will.

The making of a domestic will can be registered in the succession register by the testator or any person who has the information regarding the domestic will and has been asked by the testator to make the entry. It is not compulsory for domestic wills to be registered in the succession register.

Notarial wills and agreements as to succession are registered in the succession register by the notary who authenticated the will or agreement as to succession or with whom the will has been deposited. To do so, the notary shall make an entry in the succession register or submit a notice to that effect to the register. From 1 January 2015, notaries no longer submit notices to the succession register, instead amending the succession register data by way of entries to that effect.

Data on domestic wills may be entered into the succession register via the state portal https://www.eesti.ee by any person who knows of the making of the will and has been asked to make the relevant entry.

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

There are generally no restrictions on the making of wills, nor is the testator's own right of disposal generally restricted if he or she has made a will.

Freedom of testation is restricted by the institution of reserved share, which restricts the testator's freedom to leave his or her property to the heirs of his or her liking. The right to claim a reserved share from the heirs arises if a testator has by a will or agreement as to succession disinherited a descendant, parent or spouse who is entitled to succeed in intestacy and with respect to whom the testator bears, at the time of his or her death, a maintenance obligation arising from the Family Law Act, or a testator has reduced their shares of the estate as compared to their shares according to intestate succession. The recipient of the reserved share thus has a claim against the heirs under the Law of Obligations Act. The claim lies in the fact that the person entitled to receive the reserved share may demand the payment of a monetary amount equal to the reserved share based on the value of the estate. The person who realises the right to reserved share is not an heir. The amount of the reserved share is half of the value of the share of the estate that an heir would have received in the event of a succession under law, had all of the legal heirs accepted the estate.

In addition to his or her share of the estate, the spouse of the testator may claim the establishment of a personal right of use of immovable property which was the matrimonial home of the spouses, provided that the standard of life of the spouse of the testator would deteriorate due to succession. According to the case-law of the Supreme Court, the spouse of the testator has this right of claim regardless of whether or not the spouse inherits anything in addition and whether the succession takes place in accordance with a will and/or in intestacy.

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

If the testator did not leave a valid will or agreement as to succession, succession is considered intestate and is governed by law. If a testator's will or agreement as to succession was not made regarding all of his or her property, succession for the part not covered occurs in accordance with the law. The intestate heirs are the spouse and relatives of the testator; succession takes place on three levels. The spouse succeeds in intestacy together with intestate heirs.

The first in line are the testator's descendants (children, adopted children, grandchildren, etc.). Alongside the first-order heirs, the spouse inherits an amount equal to the share of a child of the testator, and no less than one-quarter of the estate.

If there are no first-order heirs, second in line are the parents of the testator and their descendants (brothers and sisters of the testator). If both parents of the testator are alive at the time of the opening of succession, they succeed to the entire estate in equal parts. If the father or mother of the deceased is not alive at the opening of the succession, the children, adopted children and grandchildren, etc. of the deceased parent take his or her place. Alongside the second-order heirs, the spouse succeeds to half of the estate.

If there are no second-order heirs, third in line are the grandparents of the testator and their descendants (i.e. the testator's aunts and uncles). If all of the grandparents of the testator are alive at the time of the opening of succession, they succeed to the entire estate in equal parts. If a paternal or maternal grandparent of the testator is not alive at the opening of the succession, their place is taken by the children, adopted children and grandchildren, etc. of the deceased grandparent. If there are none, the other grandparent on the same side of the family succeeds to his or her share. If the other grandparent is also deceased, his or her children, adopted children and grandchildren, etc. succeed to the estate. If either both paternal grandparents or both maternal grandparents of the testator are deceased at the opening of the succession and they have no descendants, the grandparents of the other side of the family and their children, adopted children and grandchildren, etc. of the deceased grandparent take their place. The provisions pertaining to first-order heirs are applied to descendants who take the place of their parents as heirs.

If the testator was married and had no first-order or second-order heirs, the spouse inherits the entire estate.
If the testator had no intestate heirs or spouse, the local government of the place in which the succession was opened is the legal heir. The place where the succession was opened is the last place of residence of the testator. If the testator's last permanent place of residence was a country other than Estonia, but Estonian law is to be applied to the succession, the intestate heir is the Republic of Estonia.

5 What type of authority is competent:

5.1 in matters of succession?

In Estonia, succession proceedings are carried out by the Estonian notary where the succession proceedings were initiated if the testator's last residence was in Estonia. The notary makes an entry into the succession register regarding the initiation of proceedings. If the last residence of a testator was in a foreign country, an Estonian notary shall conduct succession proceedings only with respect to property located in Estonia provided that the succession proceedings cannot be conducted in the foreign country or the proceedings conducted in the foreign country do not include the property located in Estonia or the succession certificate prepared in the foreign country is not recognised in Estonia.
Succession proceedings shall be conducted by an Estonian notary even if Regulation (EU) No 650/2012 of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (OJ L 201, 27.7.2012, p. 107–134), requires succession proceedings to be conducted in Estonia, in application of Articles 4–15 and 17 of said Regulation.

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

Declarations of acceptance and refusal of succession must be presented to the notary who is processing the succession matter. Declarations may also be notarially authenticated by another notary who will then forward the declaration to the notary who is carrying out the proceedings.
Consular officials with special qualifications and working in Estonian foreign representations may also certify declarations of acceptance or waiver of succession. The consular officials are obliged to immediately forward such declarations they certify to the notary processing the succession matter.

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

The system for legacy gives legatees the right to demand that the executor of the legacy transfers the object of the legacy. To receive the legacy, the legatee must submit a claim of execution of legacy to the executor of the legacy. The testator may impose the execution of the legacy as an obligation for the heir or another legatee. If the testator has not appointed an executor for the legacy, the heir shall act as executor.
As the provisions on acceptance or waiver of succession are applied to the acceptance and waiver of a legacy, the consequence of failure to submit a declaration of waiver of legacy during the waiver term is acceptance of the legacy. If the legatee wishes to waive the legacy, the waiver declaration must be submitted within the waiver term set forth in law, which is three months following the testator's death and of learning that one has a right to receive a legacy.
As part of succession proceedings, the notary shall contact all the legatees named in the will and inform them of their rights to the legacy. Before the submission of the claim of execution of legacy, the legatee has the right to obtain information regarding the legacy. Analogous to acceptance of succession, the declaration of acceptance or waiver of legacy is irrevocable. In order to substantiate his or her rights, the legatee has the right to apply to the notary who is processing the succession matter for a certificate (certificate of legatee) regarding a claim arising from a legacy.
If the legacy is in the form of real estate or some other object where a sale transaction must be notarially authenticated, the contract on transfer of legacy between the executor of the legacy and the legatee must also be notarially authenticated.
A legatee who is an heir has the right to the legacy even if he or she waives succession.

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

A reserved share is a monetary claim against an heir under the law of obligations and is to be presented to the heirs. The right to receive a reserved share arises upon opening of succession. An application does not have to be filed with a notary in order to receive a reserved share.
If a testator has by a will or agreement as to succession disinherited a descendant, parent or spouse who is entitled to succeed in intestacy and with respect to whom the testator bears, at the time of his or her death, a maintenance obligation arising from the Family Law Act, or a testator has reduced their shares of the estate as compared to their shares according to intestate succession, they are entitled to claim a reserved share from the heirs.
The notary shall, on the basis of a notarially authenticated application of an heir, executor of a will, or person entitled to receive a reserved share, authenticate the certificate regarding claim of reserved share – also known as the certificate of recipient of reserved share. The certificate on the recipient of reserved share shall set out the recipient and the size of the reserved share as a legal share of the estate.
The right to reserved share may be waived by an agreement as to succession entered into by the testator and the person entitled to succeed. The agreement must be notarially authenticated.

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)

Upon opening of succession – i.e. upon the death of the testator – the estate passes to the heirs, who may be heirs by agreement as to succession, testate heirs or intestate heirs.
To determine eligibility to inherit, succession proceedings may be launched by an heir, testator's creditor, legatee or other person entitled with regard to the estate. A person wishing to open proceedings must contact a notary; the notary shall prepare and notarially authenticate an application for this purpose. The proceedings can only be carried out by one notary; thus if succession proceedings have already been initiated by application to one notary, the notary who accepted the later application will forward it to the notary carrying out the succession proceedings.
The heir may either accept or waive the succession. The term for waiver of right of succession is three months. This period begins to elapse from the moment at which the heir learns or should have learned of the death of the testator and his or her right of succession. If the heir does not waive the estate during that time, he or she is considered to have accepted succession. In order to accept the estate, the heir may also apply before the said term to the notary processing the succession case.
The decision of the heir to accept or waive succession is irreversible. After renouncing succession, it can no longer be accepted; after accepting succession, it can no longer be waived. This principle also applies to acceptance and waiver of legacy – with the exception that legatees who are also heirs have the right to the legacy even if they have waived succession.
Declarations of acceptance and refusal of succession must be notarially authenticated.
The notary shall make an entry concerning the initiation of succession proceedings in the succession register immediately after the acceptance of the application for initiation of succession proceedings and shall publish a notice concerning the initiation of succession proceedings in the official publication *Ametlikud Teadaanded* (Official Announcements) no later than two working days after initiation of the succession proceedings. The notary also sends a notice concerning the initiation of succession proceedings to the heirs known to the notary and other persons to whom rights have been granted and duties have been imposed by a will or agreement as to succession. In the case of succession on the basis of the testamentary disposition of the testator, the notary shall also inform the persons who would have inherited in the event of intestate succession.

A notary shall make inquiries to registers concerning the rights and obligations of the testator as well as to the credit institutions operating in the Republic of Estonia, the list of which shall be established by a regulation of the minister responsible for the area. In addition to the foregoing, a notary may also make inquiries to other persons on the basis of a notarially authenticated application of the initiator of the succession proceedings or any other person who has rights in respect of the estate. If the testator was married at the time of opening of the succession and the type of proprietary relation of spouses was joint property, a notary shall also submit corresponding inquiries concerning the rights and obligations of the testator's surviving spouse.
The person entitled to initiate succession proceedings has the right to obtain information from the notary during the succession proceedings on who has accepted the succession and who has waived the succession. A person who would have inherited in the case of intestate succession has the same right in the case of succession on the basis of testamentary disposition. The foregoing persons also have the right to examine the results of the inquiries made in respect of the rights and obligations of the testator. In the case of succession on the basis of testamentary intention, the person who would have inherited in the case of intestate succession has the right to examine the will and agreement as to succession.
If sufficient proof is provided concerning the right of succession of the heir and the extent thereof, a notary shall authenticate a succession certificate, but no earlier than one month after publication of the notice of initiating succession proceedings in the official publication *Ametlikud Teadaanded*. The notary shall make an entry on authentication of the succession certificate in the succession register.
After issue of the succession certificate, heirs can divide the estate by agreement. In the event of a dispute, the estate is divided by a court at the request of the heir.
Upon division of an estate, it shall be determined which items or shares of items and which rights and obligations forming part of the estate transfer to each co-heir. An estate shall be divided among heirs according to their shares of the estate, based on the usual value of the objects forming part of the estate at the time of the division. By agreement of the heirs, an item forming part of the estate may be evaluated on the basis of the special interest of an heir.

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

Succession is opened upon the death of the individual. Upon opening the succession, the succession passes to the heir. The basis of succession is law or the last will of the testator, expressed in a will or agreement as to succession. Right of succession under agreement as to succession is preferred to testate right of succession, and both of these are preferred to intestate right of succession.
No separate application needs to be submitted in order to receive the succession. Upon acceptance of succession, all of the rights and obligations of the testator pass to the heir, except those that are by nature integrally connected to the person of the testator or which by law are not transferable. If the heir accepts succession, the ownership of the objects making up the estate shall be considered transferred retroactively of the date of opening of succession. If the succession was accepted by more than one heir (co-heirs), the estate belongs to them jointly.
Every person of legal capacity is worthy to succeed – this includes natural persons alive at the time of the death of the testator, and legal persons that existed at that time. A child who is live-born after the opening of succession is considered worthy to succeed upon opening of succession if the child was conceived before the opening of the succession. A foundation established on the basis of will or agreement as to succession shall be considered to have existed at the time of opening of succession if it later acquires rights as a legal person.
A surviving spouse has no right of succession or right to the preferential share if the testator had filed for divorce before death or demanded written consent for divorce, or was entitled at the time of his or her death to seek annulment of the marriage and had filed such a request to a court.
A parent who has been completely deprived of custody may not be the legal heir of a child.
A person who meets any of the following conditions is not worthy to succeed:
intentionally and unlawfully caused or attempted to cause the death of the testator,
intentionally and unlawfully placed the testator in a situation in which the testator was incapable of expressing or revoking his or her testamentary intention, by duress or deceit hindered the testator from making or altering a testamentary disposition or in the same manner induced the testator to make or revoke a testamentary disposition if it was no longer possible for the testator to express his or her actual testamentary intention,
intentionally and unlawfully removed or destroyed a will or agreement as to succession if it was no longer possible for the testator to renew it,
falsified the will made by the testator or the agreement as to succession or a part thereof.
Under Estonian law, a recipient of a reserved share is not considered to be an heir; the recipient of a reserved share has a payable claim against the heir under the law of obligations. The right to claim a reserved share from the heirs arises if a testator has by a will or agreement as to succession disinherited a descendant, parent or spouse who is entitled to succeed in intestacy and with respect to whom the testator bears, at the time of his or her death, a maintenance obligation arising from the Family Law Act, or a testator has reduced their shares of the estate as compared to their shares according to intestate succession. The amount of the reserved share is half of the value of the share of the estate that the heir would have received in the event of an intestate succession, had all of the legal heirs accepted the estate.
Succession proceedings may be launched by an heir, testator's creditor, legatee or other person entitled with regard to the estate, on the basis of a notarially authenticated application. Succession proceedings are carried out by the Estonian notary at whose office the succession proceedings were initiated and who is entered into the succession register as the executor of succession proceedings. The proceedings can be carried out by one notary; thus if succession proceedings have already been initiated by application to one notary, the notary who accepted the later application will forward it to the notary carrying out the succession proceedings. A notary shall authenticate a succession certificate if sufficient proof is provided concerning the right of succession of an heir. If there are multiple heirs, the notary shall indicate the size of the share of the estate of each heir.
The heir may either accept or waive the succession. If a person entitled to succeed does not waive succession within three months of the moment he or she learned or should have learned of his or her right to succession, he or she is considered to be have accepted succession. A person who waives succession avoids the legal consequences related to the succession.

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

Yes, an heir is obliged to perform all of the testator's obligations. If the estate is insufficient, an heir shall perform the obligations out of the heir's own property unless the heir has, after making an inventory, performed the obligations pursuant to the procedure provided by law, the estate has been declared bankrupt or the bankruptcy proceedings have been terminated by abatement without declaring bankruptcy.
If an heir requests an inventory of the estate, the heir's creditors are forbidden to satisfy the claims for payment thereof against the heir out of the estate until an inventory has been made, but not longer than until expiry of the term of the inventory. After the inventory has been made, the heir's liability for obligations related to the estate is limited to the value of the estate.

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

If the testator owned immovable property, the entry in the land register becomes invalid upon his or her death, considering that the person entered in the land register as the owner of the real right is not the person to which the real right (in substantive law) actually belongs, as all of the assets of the testator pass to another person – the heir – upon opening of succession.
To enter the heir or heirs into the land register, a registration application from the new owner of the real right must be submitted, and a document substantiating legal succession – the succession certificate – must be appended.

If the real right has been transferred to a community of co-heirs, the declaration of one co-heir is sufficient to correct the entry, and the other heirs are not considered pertinent, i.e. their consent is not necessary for the entry, because an heir cannot prevent a title that has already been transferred to him or her from becoming visible in the land register. The same principle applies if a part of a community of co-heirs is transferred.
Legislation sets forth special requirements if, in accordance with the succession certificate, the category of spouses' property relations was joint ownership. In such a case, every specific object may be both joint property and separate property, and this matter cannot be resolved in the course of authentication of the succession certificate.
In addition, legislation sets forth exceptions for the situation in which the heirs have divided the estate for the purpose of dissolving the community, determining what items or parts thereof, or rights and obligations comprising the estate will be retained by every co-heir and immovable property comprising the estate is to be retained by a specific co-heir.

If the testator was never married, the following must be submitted in order to correct the data in the land register:

a succession certificate,
a registration application, notarially authenticated or digitally signed; a registration application to be digitally signed is to be prepared and submitted to the land registration department via the land registration portal; it is possible to enter the portal using an Estonian **ID card**, **mobile ID**, certain foreign ID cards or via the state portal.
No state fee is payable for correcting an entry in the land register.
In such a case, all of the heirs listed on the succession certificate are entered into the land register as common owners.

In the same case where the estate is divided between the co-heirs such that the immovable is retained by a specific co-heir, the following must be submitted for amending the entry in the land register:

an agreement on division of the estate notarially authenticated by an Estonian notary,
a registration application (may be included in the above-mentioned notarially authenticated agreement on division of the estate).
A state fee is payable for amendment of the entry in the land register.
In such a case, the person indicated in the agreement on division of the estate as the person to whom ownership of the specific immovable is granted under the agreement is entered into the land register as the owner of the property.
The succession certificate must be presented to the notary for notarisation of the agreement on division of the estate.

If the testator's marriage had ended by the time of the opening of the succession or ended with the death of the testator, but the immovable property in the estate was not the common property of former spouses, the following must be submitted in order to correct the entry in the land register:

a succession certificate,
a certificate of right of ownership, which proves that the property is the testator's separate property,
a registration application, notarially authenticated or digitally signed a registration application to be digitally signed is to be prepared and submitted to the land registration department via the land registration portal; it is possible to enter the portal using an Estonian **ID card**, **mobile ID**, certain foreign ID cards or via the state portal.
No state fee is payable for correcting an entry in the land register.
All of the heirs specified on the succession certificate are entered into the land register.
For notarisation of the certificate of right of ownership, the applicant must substantiate to the notary that it was property in sole ownership (separate property) of the spouse. As a rule, the documents that constituted the basis for acquisition of the property should be submitted to the notary, if the notary is unable to obtain them, to prove that the spouses had divided the property or specified the asset as separate property (e.g. marital property agreement, agreement on division of joint property, other document on acquisition substantiating that it is separate property, such as a gratuitous contract, etc.).

If the testator's marriage had ended by the time of the opening of the succession or ended with the death of the testator, and the immovable property in the estate was the common property of former spouses, the following must be submitted in order to correct the entry in the land register:

a succession certificate,
a certificate of right of ownership, which proves that the property was the joint property of the testator and former spouse,
a registration application, notarially authenticated or digitally signed; a registration application to be digitally signed is to be prepared and submitted to the land registration department via the land registration portal; it is possible to enter the portal using an Estonian **ID card**, **mobile ID**, certain foreign ID cards or via the state portal.
No state fee is payable for correcting an entry in the land register.
All of the heirs listed on the succession certificate and the surviving spouse or former spouse are entered in the land register regardless of whether or not they are heirs.
For notarisation of the certificate of right of ownership, the applicant must substantiate to the notary that it was joint property. As a rule, the documents constituting the basis for acquisition of the property should be submitted to the notary, if the notary is unable to obtain them (among others, the agreement on division of joint property, marital property contract).

If the testator's marriage had ended by the time of the opening of the succession or ended with the death of the testator, and the immovable property in the estate was the common property of former spouses and the estate is divided between co-heirs such that the immovable property will be retained by a specific co-heir, the following must be submitted in order to amend the entry in the land register:

a certificate of right of ownership and agreement on division of joint marital property, notarially authenticated by an Estonian notary,
a registration application (may be included in the abovementioned notarially authenticated agreement on division of joint property and the estate).
A state fee is payable for amendment of the entry in the land register.
As a result of the division of joint marital property, the testator and the surviving spouse are entered in the land register as owners pursuant to their legal shares. The heirs listed in the succession certificate to whom the ownership of the specific immovable property is transferred under the agreement are entered in the land register as the owners of the testator's legal share. If the legal share belonging to the heirs is divided between the heirs, the size of the legal share belonging to each heir is indicated.
For notarisation of the certificate of right of ownership, the applicant must substantiate to the notary that it was joint property.

Another option in this case is to submit the following for amendment of the entry in the land register:

an agreement on division of the joint property of the former spouses and agreement on division of the estate, notarially authenticated by an Estonian notary,
a registration application (may be included in the abovementioned notarially authenticated agreement on division of joint property and the estate).
A state fee is payable for amendment of the entry in the land register.
The person indicated in the agreement on division of estate as the person to whom ownership of the specific immovable is granted under the agreement is entered into the land register as the owner of the property.
For notarisation of the certificate of right of ownership, the applicant must substantiate to the notary that it was joint property.

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?

In the event of the death of the testator, a court shall implement measures for management of the estate if:
no heir is known,
no heir is present at the place where the estate is located,
it is not known whether an heir has accepted succession,
an heir is of restricted active capacity and has not been appointed a guardian,
other grounds provided by law are present.

The measures for management of an estate are organisation of administration of the estate and application of measures to secure an action provided for in the Code of Civil Procedure. The court shall appoint an administrator for management of the estate.

The court shall implement management measures at its own initiative unless set forth otherwise in legislation. A court may also decide on the application of measures for management of an estate at the request of a creditor of the testator, legatee or any other person who has a claim in respect of the estate if failure to apply the management measures may endanger satisfaction of a claim belonging to the above-mentioned person from the assets of the estate. In the event of a dispute regarding who is entitled to inherit, a court may also decide on the application of measures for management of an estate at the request of a person claiming recognition of the right of succession.

In the event of failure to execute a testamentary direction, a court may appoint an administrator to perform the direction on the basis of a petition by an interested person. The administrator shall have the rights and obligations of an executor of a will with regard to the property designated for execution of the testamentary direction.

National and local government institutions, notaries and bailiffs are obliged to notify the court of the need, should it become known to them, to implement management measures.

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

If management measures have not been implemented with regard to the estate, the heirs to the estate shall administer the estate jointly. The heirs have the obligation to perform all dispositions made in the will, including transferring the estate based on the dispositions made in the will.

If management measures have been implemented with regard to the estate, the estate shall be administered by the court-appointed administrator, to whom the court can issue instructions for the possession, use and disposal of the assets. The administrator may only dispose of the estate in order to discharge his or her obligations and to cover expenses related to administering the estate. The administrator shall comply with the obligations of the estate administrator arising from legislation.

If an executor is appointed in the will, an heir may not dispose of objects that form part of the estate that the executor requires in order to discharge his or her duties. The executor is obliged to administer the assets prudently and to deliver to the heirs the objects that he or she does not need in order to execute the will. Until the succession is accepted by the heir, the executor is obliged to perform the obligations of administrator or apply for administration of the estate.

9.3 What powers does an administrator have?

Rights, obligations and remit of the administrator of an estate

to administer property prudently and ensure its preservation.
to provide maintenance out of the estate to family members who lived with the testator until the latter’s death and received maintenance from the testator.
to fulfil obligations related to the estate from the estate and to report on administration of the property to the court and heirs.
to take the estate in the possession of an heir or a third party into his or her possession or guarantee separation of the estate from an heir’s property in any other manner, if this is necessary for ensuring preservation of the estate.
to submit to a notary an application for initiation of succession proceedings, if necessary, or to take other measures for the identification of the heir if Estonian notaries are not competent to conduct the succession proceedings.
the administrator of the estate shall, after making an inventory, satisfy the claims entered in the inventory of the estate for which the due date for fulfilment has arrived. The administrator of the estate may only fulfil the claims not yet due with the consent of the heir. If a court has also decided on the application of measures for management of an estate at the request of a creditor of the testator, legatee or any other person who has a claim in respect of the estate, where failure to apply the management measures may endanger satisfaction of a claim belonging to the above-mentioned person from assets of the estate, the administrator is required, after preparation of the inventory of the estate, to satisfy all of the claims entered in the inventory of the estate from the assets of the estate in the order specified in legislation. The estate may not be issued to the heir before the claims are satisfied.

If an estate is insufficient for the satisfaction of all of the claims and the heir does not agree to satisfy the claims out of the heir’s own property, the administrator of the estate or the heir is required to submit promptly an application for the declaration of the bankruptcy of the estate. An administrator may only dispose of the estate for the performance of the obligations thereof and for covering the expenses related to the administration of the estate. An administrator does not have the right to dispose of an immovable belonging to an estate without court authorisation. This does not apply in a case in which no heir has been determined within six months of the opening of the succession or if an heir who accepted the succession has not commenced to administer the estate within six months of acceptance of succession; in such a case, the administrator may sell off the estate after performing an inventory and deposit the money received from the sale of the estate.

The heir has no right to dispose of an estate that has been granted to an administrator for purposes of administration.

The administrator of the estate has the right to receive a fee for performing his or her duties, the amount of which shall be determined by a court.

Rights, obligations and remit of an executor of a will

An executor of a will shall perform the duties provided by law unless otherwise provided for in the will. An executor of a will may derogate from the duties assigned in the will with the consent of interested persons if this is in the interest of executing the testator’s testamentary intention.

The executor is obliged promptly upon accepting his or her duties to submit to the heir a list of objects in the succession that it requires for discharging his or her duties.

Until the succession is accepted by the heir, the executor is obliged to perform the obligations of administrator or apply for administration of the estate.

An executor of a will is required to execute legacies, testamentary obligations, testamentary directions and other obligations arising from the will or agreement as to succession.

An executor of a will is required to administer prudently and ensure the preservation of the estate necessary for the performance of his or her duties.

An executor of a will is required to take an object that forms part of an estate into his or her possession or to ensure in other ways the separation of the object from the property of the heir if this is necessary for the performance of the duties of the executor of the will.

An executor of a will has the right to assume obligations with respect to a succession and to dispose of objects that form part of an estate, if this is necessary for the performance of the duties of the executor of the will.

If a testator has made dispositions with respect to division of an estate, the executor of the will shall divide the estate between the heirs.

An executor of a will has the right to represent an heir or legatee to the extent necessary for the performance of the duties of the executor of the will.
An executor of a will is required to deliver to the heir the objects that form part of the estate that are in his or her possession and which he or she does not need for the performance of his or her duties.
If an executor of a will is not required to execute a disposition by the testator personally, the executor of the will may demand execution thereof by an heir.
An heir is not entitled to dispose of objects that form part of the estate that the executor requires for performing his or her obligations.
An executor of a will shall be liable for any damage caused wrongfully to an heir or legatee by violating his or her duties
An executor of a will is required to report on his or her activity to the heirs and legatees.
The necessary expenses that an executor of a will incurs for performance of his or her duties are reimbursed out of the estate.
An executor of a will has the right to demand reasonable remuneration for his or her activities unless otherwise provided for in the will.

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?

If sufficient evidence is provided concerning the right of succession of the heirs and the extent thereof, the notary shall notarise the succession certificate, setting out the size of the share of the estate of each heir; however, the certificate shall not set out the composition of the estate.
The rights and obligations of the testator legally transfer to the heir as of the moment of death of the testator. A succession certificate is not a legislative act, i. e. a succession certificate does not terminate or create a right of ownership. A succession certificate is a document certifying legal succession in the case of which it is assumed that the person(s) specified on the certificate are (an) heir(s) to the extent stated thereon.

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Succession - Ireland

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

There is no automatic transfer of assets following death.
In many cases property is held jointly prior to death and that property will transfer under the principle of survivorship provided that was the intention of the joint owners.
Other than joint property passing by survivorship assets must be transferred under the terms of a written Will or on intestacy (where there is no Will). The criteria for drafting a Will are set out in the 1965 Succession Act (Part VII). The rules on intestacy (where there is no Will) are also set out in the 1965 Succession Act (Part VI).

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

There is no requirement for a Will to be registered in this jurisdiction

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

The 1965 Succession Act contains a number of restrictions on the disposal of assets by way of Will (Part IX Legal right of testator's spouse, civil partner and provision for children).

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

The 1965 Succession Act sets out who inherits in the absence of a will and in what proportions (see Part VI).

5 What type of authority is competent:

5.1 in matters of succession?

The issue of Grants of Probate where there is a will and the issue of Letters of Administration where there is no Will are overseen by the Dublin based Probate Office and fourteen District Probate Offices based in other geographic locations. The Probate Office and the District Probate Registries are offices of the Irish Courts Service. Grants of Probate are issued to an Executor(s) where there is a Will and to an Administrator where there is no Will.

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

These issues are dealt with outside the formal probate process as part of the administration of a deceased person's estate. Usually dealt with by a suitably qualified legal representative

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

These issues are dealt with outside the formal probate process as part of the administration of a deceased person's estate. Usually dealt with by a suitably qualified legal representative

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

These issues are dealt with outside the formal probate process as part of the administration of a deceased person's estate. Usually dealt with by an suitably qualified legal representative

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)

Other than the issue of a Grant of Probate or Letters of Administration all other matters relating to the administration of a deceased persons estate are dealt with by the Executor(s) or the Administrator(s) without any further inputs from the Probate Office or the District Probate Offices. The main function of an Executor or an Administrator is to distribute the assets of the deceased. The assets are distributed in accordance with the wishes of the deceased as set out in their Will or if there is no Will in accordance with the provisions of the 1965 Succession Act.

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

The concept of heirs is not known to Irish law. The term beneficiary is used to describe a person who inherits an asset from a deceased person

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

Debts can be payable in a deceased persons estate but the Executor(s) or Administrator(s) are not personally liable for those debts.

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

There are numerous statutory provisions in place which set out the requirements for transferring immoveable property. However those provisions are not part of the probate process.

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?

Grants of Probate or Letters of Administration are only issued on request. There is no mandatory requirement to take out administration.

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

If there is a Will it will normally be the Executor(s) who was appointed by the deceased in his or her Will. In an intestacy situation the person will be determined by the provisions of the 1965 Succession Act.

9.3 What powers does an administrator have?

Executors and Administrators have full powers without any court intervention to administer the estate of a deceased person. If any issues arise during the administration Executors and Administrators can apply to the High Court for appropriate orders.

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 the case of a Will a Grant of Probate will be issued. In the case of an intestacy Letters of Administration will be issued. Ireland exercised it's opt out for this area and is therefore not currently bound by the Regulation.

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Succession - Greece

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

A. Voluntary succession is only possible through a will (Articles 1710 and 1712 of the Civil Code).

The following types of will are provided for:

(a) Common wills:

Holographic will: written, dated and signed entirely by the testator in his/her own hand (not using mechanical devices) (Articles 1721-1723 of the Civil Code). It is not necessary to submit such a will to any authority. Following the testator's death, *anyone holding a holographic will must, upon being informed of the testator's death and without intentional delay, submit the will for publication to the Judge of the district civil court sitting either at the testator's last domicile or residence or at his/her own domicile,* or to any Greek consular authority if the holder of the will resides abroad (Articles 1774-1775 of the Civil Code).

Sealed will: executed by the testator and submitted in a sealed envelope to a notary in the presence of three witnesses or in the presence of two notaries and one witness. Following the testator's death, the notary must, *without intentional delay, personally deliver the original will to the Judge of the district civil court sitting in the region in which the notary has its registered office* (Articles 1738-1748 and 1769 of the Civil Code).

Public will: announced verbally by the testator to the notary in the presence of three witnesses or to two notaries in the presence of one witness. A notarial deed is executed. This contains the will and is retained by the notary, who must*, upon being informed of the testator's death and without intentional delay, send a copy thereof to the Judge of the district civil court sitting in the region in which the notary has its registered office* (Articles 1724-1737 and 1769 of the Civil Code).

(b) Extraordinary wills:

Under extraordinary circumstances a will may be executed on board a ship (Articles 1749-1752 of the Civil Code), by soldiers in military campaign (Articles 1753-1756 of the Civil Code) and persons in isolation (Article 1757 of the Civil Code). An extraordinary will shall be delivered without delay to the nearest Greek consular authority or to a notary in Greece and shall be notified to the competent supervisory authority (Articles 1761-1762 of the Civil Code). An extraordinary will shall become null and void immediately upon lapse of three months of the date on which the extraordinary circumstances ceased to affect the testator provided that the latter is still alive (Articles 1758-1760 of the Civil Code).

Every will shall be equally valid, and a subsequent will shall repeal any previous one, provided that the testator has explicitly repealed the previous will or when the subsequent will contains provisions that are contradictory to or different from those of the previous one. In the latter case, a subsequent will shall only repeal the parts of the previous will which contradict it (Articles 1763-1768 of the Civil Code).

In all cases the testator must be competent to act, must be acting of his/her own free and unobstructed will, and must meet the requirements set by law for the lawful execution of each type of will.

B. Alternatively, a donation due to death contract may be concluded (Articles 2032-2035 of the Civil Code). In this case, however, the donee shall not be considered as the donor's heir or universal successor.

C. A joint will (i.e. a will executed by two or more persons in one act) is prohibited by law (Article 1717 of the Civil Code).

D. Agreements as to future successions are also prohibited (Article 368 of the Civil Code).

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

A. A holographic will need not be submitted to a specific authority. For reasons of safety, however, the testator may leave it with a notary for safekeeping (Article 1722 of the Civil Code).

B. Sealed wills and public wills must be submitted to a notary, and a relevant notarial deed must be executed (Articles 1743 and 1732 of the Civil Code).

C. An extraordinary will must be notified to a supervisory authority and must be submitted without delay to the nearest Greek consular authority or to a notary in Greece (Articles 1761-1762 of the Civil Code).

D. Upon the testator's death, *a notary holding a will must, in the case of a public will, send a copy to the Judge of the district civil court, and, in the case of a sealed or extraordinary will, the notary must personally deliver the original will for publication to the Judge of the district civil court sitting in the region in which the notary has its registered office (Articles* 1769-1780 of the Civil Code and Articles 807-811 of the Code of Civil Procedure). *Any person holding a*

holographic will must, upon being informed of the testator's death and without intentional delay, submit it for publication to the Judge of the district civil court sitting either at the testator's last domicile or residence or at his/her own domicile (Articles 1774 – 1775 of the Civil Code and Articles 807 – 811 of the Code of Civil Procedure). If the holder of a will resides abroad, he/she may submit it to any Greek consular authority.

E. Any person who finds or holds a holographic will and fails to submit it to a competent authority immediately is subject to civil and criminal penalties and, if he/she is an heir, he/she is declared debarred from succession (Articles 914, 902, 903 and 1860 of the Civil Code, Article 811 of the Code of Civil Procedure and Articles 222 and 242 of the Criminal Code).

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

A. The descendants and parents of the deceased, as well as the surviving spouse or a survivor with whom the deceased had concluded a registered partnership, who would have been called as intestate successors, are entitled to a reserved portion of the estate (Article 1825 of the Civil Code and Article 11 of Law 3719/2008).

B. The reserved portion of the estate corresponds to half of the intestate portion. The legal beneficiary of that portion is included as an heir apparent in relation to that portion (Article 1825 of the Civil Code).

C. The method used to calculate that ratio is complex. Account is taken of the chargeable benefits already received by the beneficiary from the deceased and of the total (notional) value of the estate (Articles 1830-1834 of the Civil Code).

D. Any restriction imposed by the will on the beneficiary of the portion, is considered not to have been written to the extent that it applies to the reserved portion of the estate (Article 1829 of the Civil Code). By lodging an action to overturn a loveless donation, the beneficiary of the portion may seek to overturn a donation made by the deceased during his/her lifetime, if the estate still in existence at the time of the deceased's death is insufficient to cover the reserved portion. The right to lodge the action is subject to a statute of limitation of two years after the death of the deceased (Articles 1835-1838 of the Civil Code).

E. The legal beneficiary of the reserved portion shall not receive the reserved portion of the estate if he/she is disinherited by the deceased (Articles 1839-1845) or if he/she is debarred (Articles 1860-1864). The legal beneficiary of the reserved portion may waive the succession (Articles 1847-1859 of the Civil Code) or may waive the right to the reserved portion (Article 1826 of the Civil Code).

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

There are six classes of intestate succession. A person included in one class is not called to the succession if another person from a previous class is called to the succession (Article 1819 of the Civil Code):

A. The descendants of the deceased are called under the first class of intestate succession. Succession is determined per stirpes. The closest descendant excludes more distant descendants in the same root. Children inherit equal shares of the estate (Article 1813 of the Civil Code).

The surviving spouse is also included in the first class and receives one fourth of the estate (Article 1820 of the Civil Code).

A surviving person with whom the deceased had concluded a registered partnership is also included in the first class and receives one sixth of the estate (Article 11 of Law 3719/2008).

B. The parents and siblings of the deceased, as well as the children and grandchildren of any of the deceased's siblings who died before the deceased or who have waived their rights of succession or have been debarred, are also included in the second class. The parents and siblings, as well as the children and grandchildren of any siblings who died before the deceased or who have waived their rights of succession or have been debarred, inherit the estate per stirpes (Article 1814 of the Civil Code).

If half-siblings are ranked with parents or full siblings or with children or grandchildren of full siblings, they receive half of the share that belongs to full siblings. Half of the share is also received by the children or grandchildren of any siblings who died before the deceased or who waived their right to succession or have been debarred (Article 1815 of the Civil Code).

The surviving spouse is also included in the second class and receives half the estate (Article 1820 of the Civil Code).

A surviving person with whom the deceased had concluded a registered partnership is also included in the second class and receives one third of the estate (Article 11 of Law 3719/2008).

C. The grandparents as well as the children and grandchildren from among the descendants of the deceased are called under the third class of intestate succession.

If at the time of the deceased's death, the grandparents in both lines are alive and have not waived their right to succession and have not been debarred, they will be the sole beneficiaries of the estate and will inherit it in equal shares.

If at the time of death of the deceased the grandfather or grandmother in the father's or mother's line is not alive or has waived the right to succession or has been debarred, he/she is replaced by his/her children and grandchildren. In the absence of any children and grandchildren or if these have waived their rights to succession or have been debarred, the share of the person who has died or has waived the right to succession or has been debarred devolves to the grandfather or grandmother in the same line, and in the absence of such a grandparent or if that grandparent has waived the right to succession or has been debarred, it devolves to his/her children and grandchildren.

If at the time of death of the deceased the grandfather and grandmother in the father's or mother's line are not alive or have waived their right to succession or have been debarred and they have no children and grandchildren or their children and grandchildren have waived their right to succession or have been debarred, the sole beneficiaries are the grandfather or grandmother and their children and grandchildren in the other line.

Children inherit equal shares of the estate and exclude grandchildren in the same root. Grandchildren inherit the estate by root (Article 1816 of the Civil Code).

A surviving spouse is also included in the third class and receives half of the estate (Article 1820 of the Civil Code).

A surviving person with whom the deceased had concluded a registered partnership is also included in the third class and receives one third of the estate (Article 11 of Law 3719/2008).

D. The great-grandparents of the deceased are called under the fourth class of intestate succession and inherit equal shares of the estate irrespective of line (Article 1817 of the Civil Code).

A surviving spouse is also included in the fourth class and receives half of the estate (Article 1820 of the Civil Code).

A surviving person with whom the deceased had concluded a registered partnership is also included in the fourth class and receives one third of the estate (Article 11 of Law 3719/2008).

E. A surviving spouse or a surviving person with whom the deceased had concluded a registered partnership is also included in the fifth class and receives the entire estate (Article 1821 of the Civil Code and Article 11 of Law 3719/2008).

A divorced spouse and a surviving person with whom the deceased had concluded a registered partnership, if the partnership was terminated while the deceased was alive, are not included in the intestate succession.

A surviving spouse against whom the deceased had lodged a divorce action, with valid grounds for the divorce, is excluded from the intestate succession (Article 1822 of the Civil Code).

F. The Greek State is called under the sixth class of intestate succession and receives the entire estate under benefit of inventory (Article 1824 of the Civil Code and Article 118 of the Law establishing the Civil Code).

5 What type of authority is competent:

5.1 in matters of succession?

The succession court, i.e. the *district civil court* of the region in which the deceased had his/her domicile at the time of death or his/her residence in the absence of domicile, or the *district civil court of the capital city of the State* in the absence of residence, has jurisdiction on succession-related matters (Articles 30 and 810 of the Code of Civil Procedure).

Notaries and the Greek consular authorities are also competent to draw up and safeguard wills.

Finally, the Greek tax authorities are also competent to receive succession tax declarations and to apply succession taxes.

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

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

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

On 5(b) to (d): The following declarations are submitted to the secretariat of the succession court:

Declarations concerning the waiver of a succession or legacy by any heir (testate heir, intestate heir, heir apparent). The waiver must be exercised within a deadline of four months from the date on which the party making the waiver was informed of the opening of the succession and of the reason for the opening. If the deceased or the heir lived abroad, the waiver deadline is extended to one year (Article 812 of the Code of Civil Procedure and Articles 1847-1859 of the Civil Code).

Declarations concerning the acceptance of a succession under benefit of inventory (Article 812 of the Code of Civil Procedure and Articles 1902-1912 of the Civil Code).

Declarations concerning the acceptance or waiver of the function of executor of a will or concerning relinquishment of that function (Article 812 of the Code of Civil Procedure and Articles 2017-2031 of the Civil Code).

Declarations accepting or relinquishing an appointment as guardian of a vacant succession (Article 812 of the Code of Civil Procedure and Articles 1865-1870 of the Civil Code).

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)

A. The heir may, within the deadline for waiver of succession (i.e. four months, or one year if the deceased or the heir resided abroad at the time of the opening of the succession - Article 1847 of the Civil Code), declare to the secretariat of the succession court *(Article 810 of the Code of Civil Procedure stipulates which succession court is appropriate)* that he/she has accepted the succession under benefit of inventory. In that case, the heir under benefit of inventory is responsible for assuming the obligations of the estate up to its assets (Articles 1902 and 1904 of the Civil Code).

The heir under benefit of inventory must proceed to take an inventory of the assets of the estate within four months. The estate is a group of property which is distinct from the heir's personal property. An heir under benefit of inventory must satisfy the creditors to the estate and then the legatees. In the case of acts of waiver of the assets of the estate, an heir under benefit of inventory must request permission from the succession court (Articles 1902-1912 of the Civil Code and Articles 812, 838-841 of the Code of Civil Procedure).

B. The creditors to the estate or the heirs may request judicial liquidation of the estate from the succession court (Article 1913 of the Civil Code). The court must order the liquidation of the estate upon request of the heir under benefit of inventory, and the latter shall, in that case, pass on the succession property to the creditors and shall be relieved of all obligations (Article 1909 of the Civil Code).

The succession court appoints a liquidator for the purposes of the liquidation, who invites the creditors to make their claims known. Satisfaction of the creditors' claims takes precedence over those of the legatees (Articles 1913-1922 of the Civil Code).

C. If the heir is unknown (vacant succession), the succession court shall appoint a guardian of the vacant succession, who shall be responsible for the administration of the estate and satisfaction of the creditors until the heir is found (Articles 1865-1870 of the Civil Code).

D. If the deceased had already gone bankrupt, the bankruptcy proceedings are continued against the estate.

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

A. The estate devolves automatically to the heir at the time of death of the deceased. In principle, therefore, no specific explicit act of acceptance of the succession is required (Article 1846 of the Civil Code).

B. Where an heir indicates by his/her conduct that he/she wishes to become an heir (by getting involved in the succession), he/she is deemed to have tacitly accepted the succession (Article 1849 of the Civil Code).

C. Where an heir has not exercised the right to waive the succession within the deadline set (i.e. four months, or one year if the deceased or the heir resided abroad at the time of the opening of the succession - Article 1847 of the Civil Code), there is deemed to be notional acceptance of the succession (Article 1850 of the Civil Code).

D. There is an exception to the principle of automatic acquisition of the estate where the object to be inherited is the ownership of, or any other right in rem over, an immovable asset. In that case, the act of acceptance of the succession or the certificate of succession must be registered at the deed registry or the land registry, and the heir acquires the right in rem with retrospective effect from the time of death of the deceased (Articles 1846, 1193, 1195 and 1198 of the Civil Code).

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

A. An heir, as the universal successor of the deceased, is liable, including with his/her personal property, for the obligations of the estate, unlike the legatees, who are specific successors of the deceased (Article 1901 of the Civil Code).

B. The heir may, within the deadline for waiver of succession (i.e. four months, or one year if the deceased or the heir resided abroad at the time of the opening of the succession - Article 1847 of the Civil Code), declare to the secretariat of the succession court that he/she has accepted the succession under benefit of inventory. In that case, the heir under benefit of inventory is responsible for assuming the obligations of the estate up to its assets (Articles 1902 and 1904 of the Civil Code).

C. The heir under benefit of inventory must proceed to take an inventory of the assets of the estate within four months. The estate is a group of property which is distinct from the heir's personal property. An heir under benefit of inventory must satisfy the creditors to the estate and then the legatees. In the case of acts of waiver of the assets of the estate, an heir under benefit of inventory must request permission from the succession court (Articles 1902-1912 of the Civil Code and Articles 812, 838-841 of the Code of Civil Procedure).

D. During the inventory, the creditors to the estate may request judicial liquidation of the estate from the succession court (Article 1913 of the Civil Code). The court must order the liquidation of the estate upon request of the heir under benefit of inventory, and the latter shall, in that case, pass on the succession property to the creditors and shall be relieved of all obligations (Article 1909 of the Civil Code).

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

To register immovable property that has been inherited, a public document (typically a notarial deed of acceptance of succession or a certificate of succession) is required. This must be submitted to the competent authority (deed registry or land registry) operating at the place where the property is situated.
For more information: http://www.ktimatologio.gr/

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 Greek law of succession, the estate is acquired by the heir directly upon the death of the deceased, without intervention by a representative or administrator (Articles 983 and 1846 of the Civil Code).

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

The heir himself/herself, who shall therefore administer the succession property. If there are several heirs, they shall administer the estate jointly until it is distributed (Articles 1884-1894 of the Civil Code).
The deceased in his/her will, or the heirs by agreement or by request filed with the succession court, may appoint an executor of the will, who shall be responsible for the administration and distribution of the estate (Articles 2017-2031 of the Civil Code).
If the heir is unknown (vacant succession), the succession court shall appoint a guardian of the vacant succession, who shall be responsible for the administration of the estate until the heir is found (Articles 1865-1870 of the Civil Code).

9.3 What powers does an administrator have?

An heir under benefit of inventory administers the estate until the creditors to the estate are satisfied (Articles 1902-1912 of the Civil Code).
At the request of any creditor or heir filed with the succession court, an order may be issued for the judicial liquidation of the estate, which shall be administered by a liquidator appointed by the succession court (Articles 1913-1922 of the Civil Code).

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?

A. Any party concerned (heir, legatee, trustee, executor of a will, creditors to the estate, buyer of the estate) may request the *Judge of the district civil court* responsible for the succession to issue a certificate of succession as part of the non-contentious proceedings (Article 819 of the Code of Civil Procedure).
B. The certificate of succession is a document issued by the *Judge of the district civil court* responsible for the succession which sets out the information relating to the succession (capacities and rights, share in the succession) (Article 1961 of the Civil Code and Article 820 of the Code of Civil Procedure). The certificate of succession may be a personal document (where it certifies the capacity and share of just one person) or a joint document (where issued to joint heirs or more than one person) (Article 1960 of the Civil Code).
C. The person referred to as the heir, legatee, trustee or executor of the will in the certificate of succession is presumed to have the capacity and relevant rights indicated in the certificate. Such presumption can be contested (Article 821 of the Code of Civil Procedure and Article 1962 of the Civil Code).
D. The certificate of succession confers authenticity. Any third parties carrying out transactions in good faith with the party indicated as the heir in the certificate of succession are protected (Article 822 of the Code of Civil Procedure and Article 1963 of the Civil Code).
E. Where an incorrect certificate of succession is issued, it shall be withdrawn, modified, repealed and removed, along with all the ordinary and extraordinary appeals against the judgment on the issuance of the certificate of succession (Articles 1964-1966 of the Civil Code and Articles 823-824 of the Code of Civil Procedure).
F. Where the object of the succession is a right in rem over an immovable asset, the heir may register the certificate of succession (Articles 1846, 1193, 1195 and 1198 of the Civil Code).
G. In addition to the certificate of succession, there are also other documents to prove the heir's capacity and rights (e.g. copy of the will, civil status certificates, action for declaratory judgment, etc.).

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Succession - Spain

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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Succession - France

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?

In a cross-border situation, a will is valid if it conforms to the law of the place where it was made.

Basic conditions in France

• The person making the will (testator) must be of sound mind (Article 901 of the Civil Code (*code civil*)).

• The testator must have legal capacity (Article 902 of the Civil Code).

• Special provisions apply for persons under legal protection: therefore, a minor under 16 years of age cannot make a will (Article 903 of the Civil Code) and adults under guardianship must be authorised by the court or family council (Article 476 of the Civil Code). Persons under protective supervision (*curatelle*) may make a will (Article 470 of the Civil Code) subject to the provisions of Article 901.

Formal requirements

In France, four types of will are recognised:

• Holographic wills: testators must entirely handwrite, date and sign these wills (Article 970 of the Civil Code).

• Notarised wills: these must be made before two notaries or one notary and two witnesses (Article 971 of the Civil Code). If the will is made before two notaries, it is dictated to them by the testator. The same applies if the will is made before only one notary. In both cases, the will is then read to the testator (Article 972 of the Civil Code). The will must be signed by the testator in the presence of the notary and two witnesses (Article 973 of the Civil Code) and must also be signed by the notary and witnesses (Article 974 of the Civil Code).

• Sealed wills: these are typed or handwritten by the testator or another person, signed by the testator and then presented closed and sealed before a notary in the presence of two witnesses (Article 976 of the Civil Code).

• International wills: these are presented by the testator to a notary and two witnesses, signed by them and then attached to a certificate drawn up by the notary by whom they will be kept (Washington Convention of 26 October 1973).

Testators may revoke their wills at any time in accordance with Article 895 of the Civil Code.

Agreements on succession

Agreements on succession are in principle prohibited (Article 722 of the Civil Code).

However, it has been accepted since January 2007 that prospective heirs (children) can waive in advance their right to bring an action regarding interference with their inheritance for the benefit of one or more persons who may or may not be heirs (brothers or sisters or their descendants). This involves the advance waiver of an action in abatement (Article 929 of the Civil Code). To be valid, this waiver must be recorded in an authentic deed executed before two notaries. The beneficiaries of the inheritance (see also question 3) must also be named in the agreement.

Furthermore, under the rules on inter vivos division including grandchildren (*donation-partage trans-générationnelle*), prospective heirs (children) can agree to their own descendants receiving all or part of their share instead of them (Article 10784 of the Civil Code).

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

All wills, particularly holographic wills, may be registered by the notary in the Central Register of Wills (*Fichier central des dispositions de dernières volontés* – FCDDV). It is not the contents of the will that are registered, but only the civil status of the person concerned and details of the notary holding the will. The role of the FCDDV is therefore to direct the applicant to the notary holding the will and not to disclose its contents.

Anyone can consult the FCDDV, subject to presenting a death certificate or any other document proving the death of the person whose will is being sought. The applicant must then approach the notary who registered the will. The application is made online: https://www.adsn.notaires.fr/fcddvPublic/profileChoice.htm.

The notary can inform only heirs and legatees of the contents of the will, unless otherwise ordered by the presiding judge of the regional court (*tribunal de grande instance*).

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

Under French law, only descendants of the deceased (children, grandchildren, etc., in order of priority) and the spouse of the deceased where there are no descendants are entitled to a reserved portion (forced heirship).

Ascendants and collateral relatives have no right to a reserved portion.

Such rights to a reserved portion, which restrict the freedom to dispose of the estate at will and can vary in value depending on the number of children of the deceased or the status of the forced heir (child or spouse), may not exceed three-quarters of the estate. Forced heirs cannot waive their reserved portion (unless they waive succession). However, they can waive in advance the right to bring an action in abatement against excessive testamentary gifts (the advance waiver of an action in abatement referred to in question 1 in relation to agreements on succession).

Those heirs can therefore assert their right to a reserved portion (Articles 721 and 912 of the Civil Code).

• Reserved portion for children: this is half if the deceased leaves only one child on death, two-thirds if the deceased leaves two children and three-quarters if the deceased leaves three or more children (Article 913 of the Civil Code).

• Reserved portion for a surviving spouse: this is one-quarter of the assets in the estate (Article 9141 of the Civil Code). It applies only if there are no descendants or ascendants and only for estates opened since 1 July 2002.

Procedure for asserting a right to a reserved portion

An action in abatement allows heirs to assert their right to the reserved portion. Therefore, if a direct or indirect gift interferes with the reserved portion of one or more heirs, the gift may be deducted from the disposable (non-reserved) part of the estate (Article 920 of the Civil Code).

This action can be brought only by forced heirs within five years of the opening of the estate or two years from the date of discovery of the interference (Article 921 of the Civil Code).

Any adult forced heir can waive in advance their right to bring an action in abatement (Article 929 of the Civil Code). This waiver must be recorded in an authentic deed executed before two notaries. It must be signed separately by each of the parties waiving their rights, in the presence of the notaries alone. It must detail its future legal consequences for each of those parties.

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

Where there is no will, the order of succession is as follows under French law:

• If the deceased has no spouse and leaves children, the estate passes to the descendants in equal shares (Articles 734 and 735 of the Civil Code).

• If the deceased is single and has no children, the estate passes to the parents of the deceased, his/her brothers and sisters and the latter's descendants (Article 738 of the Civil Code).

If the deceased does not leave any brothers or sisters or any of their descendants, his/her mother and father inherit, each receiving half the estate (Article 736 of the Civil Code).

If the mother and father have predeceased the deceased, the brothers and sisters of the deceased or their descendants inherit, excluding any other parents, ascendants or collateral relatives (Article 737 of the Civil Code).

• If the deceased leaves a spouse, the matrimonial property rights must be settled before settlement of the estate proper. After settlement of rights arising out of the matrimonial property regime, the following rules apply:

• If the deceased leaves a spouse and children, the spouse may choose between usufruct (right to enjoy the use and benefits) of all existing assets, or full ownership of one-quarter of the assets where all the children were born to the two spouses and full ownership of one-quarter where one or more children were not born to the two spouses (Article 757 of the Civil Code). The spouse will be deemed to have opted for usufruct if he/she dies without having made a choice.

• If the deceased leaves a spouse and ascendants, half of the estate passes to the spouse, onequarter to the father and one-quarter to the mother. If one of the ascendants has predeceased the deceased, their quarter passes to the spouse (Article 7571 of the Civil Code).

• If there are no ascendants or descendants, the entire estate passes to the surviving spouse (Article 7572 of the Civil Code). Notwithstanding Article 7572 of the Civil Code, if there are no ascendants, the brothers and sisters of the deceased or their descendants receive half the assets in kind included in the estate, which are assets received by the deceased from his/her ascendants through succession or gift. This is the right of reversion (Article 7573 of the Civil Code). All other assets pass to the surviving spouse.

Partners in a registered partnership

The surviving partner in a registered partnership does not have a legal right to inherit. He/she can, however, receive a legacy.

A registered partner is not therefore regarded as the deceased's heir. Registered partners have only a temporary and gratuitous right of one year to use and enjoy the family home (and its furniture) after the death of their partner, provided that this was their main home in which they were actually living at the time of the death, pursuant to Article 5156 of the Civil Code. They therefore inherit only if they have been named as an heir in a will.

Where there are children, whether or not they were born to the couple, only the disposable (non-reserved) portion can be bequeathed to the surviving partner. The disposable portion of the estate varies according to the number of children: one-third of the estate if there are two children, one-quarter if there are three children or more (see information above).

Where there are no children, the entire estate can be left to the surviving partner or a third party as there are no forced heirs. However, if the parents of the deceased are still alive, they can apply to recover assets that they have given their predeceased child, up to onequarter of the estate for each living parent (Article 7382 of the Civil Code).

5 What type of authority is competent:

5.1 in matters of succession?

In France, matters of succession are dealt with by notaries. Their involvement is mandatory if the estate includes immovable property. It is optional if there is no immovable property.

The notary draws up the order of succession in a statutory declaration (*acte de notoriété*) and immovable property certificates recording the transfer of immovable property after the death. He/she assists the heirs with their tax obligations (drawing up and filing the declaration of succession within the required time limit and payment of inheritance tax). If the composition of the assets permits this, and depending on the number of heirs and their wishes, he/she arranges the division of the assets between the heirs, preparing a deed of division (*acte de partage*).

In the event of a dispute, the regional court in the place where the estate is opened has exclusive subject-matter and territorial jurisdiction.

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

The registry of the regional court in the place where the estate is opened receives declarations of waiver or acceptance up to the value of the net assets in the estate.

No special formalities are required if the succession is accepted unconditionally.

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

The registry of the regional court in the place where the estate is opened receives waivers of universal legacies and legacies by general title. Under French law, no declaration is required for waivers of individual legacies.

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

The right to accept or waive a succession is indivisible. It covers the entire inheritance and cannot therefore be limited to the reserved portion.

It is, however, possible for heirs to waive requesting the abatement of testamentary gifts that interfere with their reserved portion.

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 is initiated upon death, at the last place of residence of the deceased.

Following the death, the heirs have three options: to accept the succession unconditionally, to accept the succession up to the value of the net assets or to waive the succession.

Unconditional acceptance may be express or tacit (Article 782 of the Civil Code). It is tacit when heirs take action that necessarily implies their intention to accept the succession and that they would only be entitled to take in their capacity as accepting heirs (Article 783 of the Civil Code).

Acceptance of the succession up to the value of the net assets requires a declaration to the registry of the regional court in whose jurisdiction the estate is opened (Articles 787 and 788 of the Civil Code). The declaration is accompanied or followed by an inventory of the estate within a maximum of two months. The inventory must be drawn up by a notary, auctioneer or court officer (Article 789 of the Civil Code). If no inventory is submitted, the succession will be deemed to have been unconditionally accepted (Article 790 of the Civil Code). The inventory must cover all the assets and liabilities included in the estate.

Acceptance of the succession up to the value of the net assets enables heirs to ensure that their personal property is not confused with that of the estate, to retain, vis-à-vis the estate, all the rights that they previously held over the deceased's property, and to be liable for the debts of the estate only up to the value of the property that they have received. Heirs will therefore be liable for any liabilities, but only up to the value of the property that they receive in the succession.
Waiver of the succession is never assumed and must be express. In order to be enforceable against third parties, it must be sent to or filed with the court within whose jurisdiction the estate is opened (Article 804 of the Civil Code). Heirs who waive a succession are deemed never to have been heirs.
The time limit for exercising the right to accept or waive a succession is 10 years, after which the heir is deemed to have waived the succession. However, an heir can be ordered to decide (Article 771 of the Civil Code) and in this case must respond within two months. After this period of reflection, if an heir has not made a decision, he/she is deemed to have accepted the succession unconditionally.
The principle in French law is to settle estates amicably, without involving the courts. The courts can only be asked to intervene if there is disagreement between the heirs.
Most estates are settled amicably with the help of a notary. However, it is possible to settle an estate without using a notary in certain circumstances, particularly where the deceased's estate does not include immovable property. Where the heirs do use a notary, they can choose whichever notary they wish. If they cannot agree on the choice of notary, each can use their own notary if they wish.
Once the notary has been chosen, the next step is to determine the composition of the deceased's assets, taking into account his/her matrimonial property regime, any previous gifts, etc. To establish the contents of the estate to be taken into account, the notary will contact various organisations (insurance companies, banks, etc.) and ask the heirs to arrange for a valuation of immovable property or other assets not listed on a stock exchange. An inventory of movable property may also be necessary. The liabilities will be determined by listing the deceased's debts, whether these are simple invoices, taxes due, recoverable benefits, guarantees or compensatory payments to an ex-spouse.
Following the death, the heirs become joint owners of all the assets in the estate until the property is divided. As co-owners, they are also responsible for the liabilities in the same proportions. The sale of jointly owned property (known as disposal) must be unanimously agreed. By contrast, administrative decisions may be taken by a majority of at least twothirds of the joint rights. In addition, any co-owner may take the necessary steps to retain jointly owned property. In the event of a deadlock, the matter may be referred to the courts in order to override the need for authorisation from some of the co-owners.
The division of the property in the estate between the heirs ends this joint ownership. This division is carried out amicably if the beneficiaries are in agreement (the general principle, Article 835 of the Civil Code) or after legal proceedings in the event of disagreement, with the involvement of a notary (the exception, Article 840 of the Civil Code). Furthermore, the division may be total or partial if certain assets continue to be jointly owned (usufruct property, for example). Any heir can request the division of the property (Article 815 of the Civil Code). The creditor of a co-owner can also seek this division (Article 81517 of the Civil Code).
This final stage in the settlement of the estate requires the transfer of property to the heirs to be recorded. As a result, certificates of ownership are needed as proof that the heirs are the new owners of the property, whether this consists of immovable property, shares in partnerships (*sociétés civiles*), vehicles or securities. In the case of immovable property, the heirs must have the certificates of ownership registered with the land registry. The same applies to shares in partnerships, in which case the certificates have to be registered with the registry of the commercial and companies court (*tribunal du commerce et des sociétés*).
If the property is not divided, the heirs remain co-owners.

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

Under French law, upon the death of a person, the succession process is initiated and the heirs designated by law automatically become co-owners of the property in the estate. These heirs have an automatic right to the property, rights and actions of the deceased (Articles 720 and 724 of the Civil code), which in principle allows them to immediately take physical possession of the assets in the estate. However, they must still decide whether to accept the succession unconditionally, accept the succession up to the value of the net assets or waive the succession (see the explanation in question 6).
Universal legatees and donees have this right only if there are no forced heirs (Article 1006 of the Civil Code). If there are forced heirs, they must be asked to deliver the legacy (Article 1004 of the Civil Code).
Legatees by general title and individual legatees must contact the heirs who have the automatic right (Articles 1011 and 1014 of the Civil Code). It is through them that they will obtain their legacy.
The State (cases of escheat) must be put in possession of the estate. The State is then represented by the state property office (*Administration des domaines*).

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

Universal heirs or heirs by general title who accept the succession unconditionally are liable indefinitely for the debts and charges on the estate. They are liable for legacies of sums of money only up to the value of the estate assets net of debts (Article 785 of the Civil Code).
Where there are several heirs, each is personally liable for the debts and charges on the estate in respect of their portion of the estate (Article 873 of the Civil Code).
Heirs who have opted for unconditional acceptance have unlimited liability for all the deceased's debts and charges. However, they can apply to be released from all or part of their obligation for a debt on the estate if, at the time of succession, they may have been unaware of the existence of that liability and payment of these debts could seriously prejudice their own assets.
• If they have opted for acceptance up to the value of the net assets, heirs are liable for debts on the estate only up to the value of the property that they have received.
• Heirs who have waived a succession are not liable for the debts.

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

Under Article 7101 of the Civil Code, only authentic deeds executed by a notary practising in France, court decisions, and official documents issued by an administrative authority can be used for land registration formalities.
Where an immovable property is included in an estate, the notary must draw up a notarial certificate or 'immovable property certificate'. This authentic deed records the transfer of ownership of the immovable property to the heirs. It must be registered with the land registry (*service de publicité foncière*). The value of the property must be declared by the heirs and indicated in the deed. It must correspond to the market price.

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 involvement of an administrator is not provided for or required by French law. However, it is possible if one is appointed by the court. It is the responsibility of the heirs to supply information to the land registries, assisted by the notary. The deceased may appoint an executor, whose powers are defined in Article 1025 et seq. of the Civil Code.

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

It is the responsibility of the heirs to effect disposition and administer the estate. In the event of a dispute, the regional court in the place where the estate is opened has jurisdiction.
The court can appoint an administrator for the estate to represent all the heirs within the limits of the powers conferred on him/her (Article 8131 of the Civil Code).
Other types of authority are also available under French law for administering an estate, in particular posthumous power of attorney (Article 812 of the Civil Code) whereby the testator appoints an administrator to administer or manage all or part of the estate for the heirs. The other options are agency by agreement (Article 813 of the Civil Code), which is subject to the rules of ordinary law, and lastly authority conferred by the court, as mentioned earlier.

9.3 What powers does an administrator have?

Heirs with an automatic right to the property, rights and actions of the deceased have full powers. In the event of a problem or deadlock, the matter may be referred to the courts and an administrator may be appointed. In that case, the administrator is responsible for provisionally organising the succession where there has been inaction, default or error by one or more heirs to the estate. In this role, the administrator acts to preserve, supervise and administer the estate (Article 8134). Within the limits of the powers conferred on him/her, the administrator also represents all the heirs in civil and judicial matters (Article 8135 of the Civil Code).

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?

Under French law, the statutory declaration (*acte de notoriété*) is the document normally drawn up by a notary to prove status as an heir (Article 7301 of the Civil Code), although such status may be proved by any means. The statutory declaration is an official document that identifies the heirs and their shares in the estate. For that reason, the deceased's relatives must provide the notary with documents identifying the members of the family involved in the succession (family record book (*livret de famille*), marriage contract, divorce judgment, etc.). The statutory declaration is regarded as authoritative unless otherwise proven. It can be replaced by a simple succession certificate signed by the heirs for small estates.
Where necessary, an instrument recording the choice made with regard to a succession (*acte d'option successorale*) and an immovable property certificate can be drawn up by the notary.
The succession ends with the division of the property, which is often recorded in a deed of division (*acte de partage notarié*).

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Succession - Croatia

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

The right of succession and rules under which courts, other authorities and authorised persons proceed in matters of succession are governed by the Succession Act (*Narodne Novine* (NN; Official Gazette of the Republic of Croatia) Nos 48/03, 163/03, 35/05 and 127/13).
A disposition of property for the event of death may be drawn up in the form of a will. A will may be made by any person of sound mind who has turned 16 years of age.
Only a will made in the form prescribed by law and subject to the prerequisites provided for by law shall be valid. In ordinary circumstances, a will may be drawn up in the form of a private will or a public will, whereas an oral will may be made in extraordinary circumstances.
A private will is a holographic will and a will made before witnesses. A holographic will is one that is handwritten and signed by the testator. A will before witnesses may be made by a testator who can read and write, by declaring before two simultaneously present witnesses that the document, regardless of who may have drawn it up, is the testator's own will and by signing it in their presence. The witnesses must affix their signatures to the will.
A public will is one made with the participation of public authorities. Any person can make a valid testament in the form of a public will. A person who cannot read or sign their own name may in ordinary circumstances make a testament only in the form of a public will. A public will may, at the request of the testator, be made by one of the legally authorised persons: a municipal court judge, a municipal court adviser and a notary public, and by a consular or diplomatic /consular representative of the Republic of Croatia abroad. The procedure and the actions to be undertaken by an authorised person in drawing up a public will are laid down by law.
A testator wishing to give their will the form of an international will must submit an application to a person authorised to draw up public wills. The purpose of making an international will is to ensure that it is recognised as regards form in the states party to the 1973 Convention Providing a Uniform Law on the Form of an International Will and the states that have incorporated the provisions concerning an international will into their law.
Only in extraordinary circumstances, precluding the making of a will in any other valid form, may a testator make his/her last will orally before two simultaneously present witnesses. Such a will ceases to be valid on expiry of 30 days following the cessation of the extraordinary circumstances in which it has been made.
Agreements as to succession (an agreement by which a person bequeaths his/her own estate or a part thereof to another party to the agreement or to a third person), agreements on future inheritance or legacy (an agreement by which a person alienates an inheritance which he/she expects; an agreement on the

inheritance of a third person who is alive; an agreement on the legacy or other benefit that a contracting party expects from the succession that has not been opened yet) and agreements on the contents of the will (an agreement by which a person undertakes to include or not to include a certain provision in his/her will, to revoke or not to revoke a provision in his/her will) are not admissible under Croatian law and are therefore null and void.
Croatian law allows the conclusion of an agreement of transfer and distribution of property during lifetime. It is an agreement that an ancestor (transferor) concludes with his/her descendants, whereby the transferor distributes and transfers to his/her descendants in whole or in part the property held at the time the contract is concluded. The consent of all children and other descendants called upon to inherit from the transferor is required in order for the agreement to be valid. It must be drawn up in writing and attested by a judge of the competent court or composed in the form of a notarial deed or certified (made legally binding) by a notary public. The contract may include the transferor's spouse, whose consent is also required in that case. The property covered by this agreement is not included in the estate nor is it taken into account in determining the value of the estate.
Croatian law does not allow the conclusion of an agreement of waiver of the succession that has not been opened. By way of exception, a descendant who can autonomously dispose of his/her rights may conclude an agreement with the ancestor to waive in advance the inheritance to which the descendant would be entitled upon the ancestor's death. Such an agreement may also be concluded by a spouse in respect of the inheritance that would go to him/her upon the death of his/her spouse. It must be drawn up in writing and attested by a judge of the competent court or composed in the form of a notarial deed or certified (made legally binding) by a notary public.

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

The fact that a will has been drawn up, deposited and announced is recorded in the Croatian Register of Wills, administered by the Croatian Chamber of Notaries Public. At the request of the testator, the information concerning these facts is submitted for registration by competent courts, notaries public, attorneys-at-law and the persons who made the will. Registration of wills in the Croatian Register of Wills is not mandatory and the fact that a will is not registered in the Register, or deposited anywhere in particular, does not prejudice its validity.
Before the testator's death, Register information cannot be made available to anyone except the testator or the person explicitly authorised by the testator for that purpose.
In probate proceedings, the court or a notary public conducting the proceedings must request all information about possible wills of the deceased person from the Croatian Register of Wills.

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

The testator's freedom to dispose of property is restricted by the right of forced heirs to a reserved share.
Forced heirs are:
the testator's descendants, adopted children, children in the care of the testator as a partner and their descendants, the testator's spouse or extramarital partner, the testator's life partner or informal life partner – they are entitled to a reserved share amounting to one half of the portion that would have gone to them in the legal order of succession had there been no will;
the testator's parents, adopters and other ancestors – they are entitled to a reserved share only if they are permanently incapacitated to work and indigent, and their reserved share amounts to one third of the portion that would have gone to them in the legal order of succession had there been no will.
Forced heirs are entitled to claim a reserved share only if, in a specific case, they are called to inherit as legal heirs.
Grounds on which the testator may exclude from the will, in whole or in part, an heir entitled to a reserved share are defined by law. The testator may do so if the heir has committed a serious violation against the testator by breaking a legal or moral obligation arising out of the heir's family relationship with the testator; if the heir has intentionally committed a serious crime against the testator or his/her spouse, child or parent; if the heir has committed a crime against the Republic of Croatia or the values protected by international law; if the heir has taken to idleness or a dishonest life. The testator wishing to exclude an heir must explicitly declare so in the will, stating the grounds for exclusion. The reason for exclusion must exist at the time of testation. By exclusion, the heir forfeits the right of succession to the extent of the exclusion itself, and the rights of other persons who may inherit from the testator are determined as if the excluded heir has died before the testator.
In addition to the possibility of excluding forced heirs, the testator may explicitly deprive a descendant entitled to a reserved share of such share in whole or in part if the descendant is heavily indebted or a squanderer. That share, instead of going to the deprived descendant, will go to his/her descendants. Such deprivation remains valid only if, at the time of the testator's death, the deprived person has an under-aged child or an under-aged grandchild from a previously deceased child, or has a child of legal age or a grandchild of legal age from a previously deceased child who are incapacitated to work and indigent. The deprived heir inherits from the testator in respect of the share not covered by the deprivation and also when the prerequisites for the deprivation no longer exist at the time of the testator's death.

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

If the testator has left no will, under the law they are succeeded by his/her legal heirs in orders of succession, with the principle that heirs nearer in succession exclude from the succession heirs more distant in succession applying.
The testator's legal heirs are his/her:
descendants, adopted children and children in the care of the testator as a partner and their descendants,
spouse,
extramarital partner,
life partner,
informal life partner,
parents,
adopters,
siblings and their descendants,
grandparents and their descendants,
other ancestors.
In respect of the right of succession, an extramarital partner is equal to a spouse, while children born out of wedlock and their descendants are equal to children born in wedlock and their descendants. An extramarital union which gives the right to legal succession is a life union between an unmarried woman and an unmarried man which has lasted for some time (at least three years or less if a common child has been born to such a union) and has ceased upon the testator's death, provided that the prerequisites for the validity of marriage have been met.
In respect of the right of succession, a life partner is equal to a spouse, and the children in his/her care as a partner are equal to his/her own children. A life partnership is a union of family life between two persons of the same sex entered into before a competent authority, in accordance with the provisions of a special law (the Same-Sex Partnership Act).

In respect of the right of succession, an informal life partner is equal to an extramarital partner. An informal life partnership is a union of family life between two persons of the same sex who have not entered into a life partnership before a competent authority, provided that the union has lasted for at least three years and has met the prerequisites for the validity of a life partnership from the outset.
The testator's descendants and spouse are in the first order of succession. The heirs in the first order of succession inherit in equal parts. *Per stirpes* distribution applies in this order of succession, so the share of the estate that would have gone to a previously deceased child had he/she survived the testator is inherited in equal parts by his/her children, the testator's grandchildren; if any of the grandchildren have died before the testator, the share that would have gone to that grandchild had he/she been alive at the time of the testator's death is inherited in equal parts by his/her children, the testator's great-grandchildren, and so on as long as there are any testator's descendants left.
A testator who has left no offspring is inherited by heirs in the second order of succession – the testator's parents and spouse. The testator's parents inherit one half of the estate and the testator's spouse inherits the other half. If both parents have died before the testator, the spouse inherits the entire estate. If the testator is not survived by the spouse, the testator's parents inherit the entire estate in equal parts; if one of the testator's parents has died before the testator, the share of the estate that would have gone to that parent had he/she survived the testator is inherited by the other parent. The testator's siblings and their descendants inherit from the testator in the second order of succession if the testator is not survived by the spouse and if one or both of the testator's parents have died before the testator. In that case (if one or both of the testator's parents have died before the testator who is not survived by the spouse), the share of the estate which would have gone to each parent had he/she outlived the testator is inherited by their children (the testator's siblings), their grandchildren, great-grandchildren and further descendants, in accordance with the rules that apply to the cases in which the testator is inherited by his /her children and other descendants. If one of the testator's parents has died before the testator who is not survived by the spouse, without leaving any descendants, the share of the estate that would have gone to that parent had he/she outlived the testator is inherited by the other parent; if the other parent has also died before the testator who is not survived by the spouse, the descendants of that parent inherit what would have gone to both parents.
A testator who has left no descendants or spouse or parents, or whose parents have left no descendant is inherited by heirs in the third order of succession. In the third order of succession, the testator is succeeded by the testator's grandparents, with one half of the estate being inherited by the grandparents on the father's side and the other half by the grandparents on the mother's side. The grandparents from the same line inherit in equal parts. If one of these ancestors from one line has died before the testator, the share of the estate that would have gone to that ancestor had he/she outlived the testator is inherited by his/her descendants (children, grandchildren and further descendants), in accordance with the rules that apply to the cases in which the testator is inherited by his/her children and other descendants. If the grandparents from one line have died before the testator without leaving any descendants, the share of the estate that would have gone to them had they outlived the testator is inherited by the grandparents from the other line or their descendants.
A testator who has left no descendants or parents, or if these have left no descendant or spouse or grandparents who have left no descendants either, is inherited by heirs in the fourth order of succession. The testator's great-grandparents are in the fourth order of succession. One half is inherited by the great-grandparents on the father's side (this half is inherited in equal parts by the parents of the testator's paternal grandfather and the parents of the testator's paternal grandmother) and one half is inherited by the great-grandparents on the mother's side (this half is inherited in equal parts by the parents of the testator's maternal grandfather and the parents of the testator's maternal grandmother). If any of these ancestors is no longer alive, the share that would have gone to him/her had he/she been alive is inherited by the ancestor who was his/her spouse. If one couple of these ancestors is not alive, the shares that would have gone to them had they been alive are inherited by the other couple from the same line. If the great-grandparents from one line are not alive, the share of the estate that would have gone to them had they been alive is inherited by the great-grandparents from the other line.
If there are no heirs in the fourth line of succession, the testator is succeeded by his/her more distant ancestors, in accordance with the rules of succession applying to his/her great-grandparents.

5 What type of authority is competent:

5.1 in matters of succession?

Probate proceedings in the first instance are conducted before a municipal court or before a notary public, as a trustee of the court.
Territorial jurisdiction of the municipal court to conduct probate proceedings is determined according to the testator's domicile at the time of death and, subordinately, according to the place of residence, the place where the predominant part of his/her estate is located in the Republic of Croatia or according to the place where the testator is registered in the Register of Citizens. The court entrusts the conduct of probate proceedings to notaries public, and where several notaries public have their registered offices in the territory of the court, cases are assigned to them evenly in alphabetical order by the surname of the notary public.

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

A declaration of acceptance or waiver of a succession (declaration of succession) may be made orally before any municipal court, before the probate court or the notary public who conducts the probate proceedings, or else a certified document containing a declaration of succession may be presented to the probate court or the notary public conducting the probate proceedings.
A declaration of acceptance or waiver of the succession may not be revoked.
Making a declaration of succession is not mandatory. A person who has not made a declaration of waiver of the succession is deemed to wish to be an heir.
A person who has made a valid declaration of acceptance of the succession may not waive it afterwards.

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

A declaration of waiver or acceptance of a legacy may be made orally before the probate court or the notary public conducting the probate proceedings, or a certified document containing a declaration of waiver or acceptance of the legacy may be presented to the probate court or the notary public conducting the probate proceedings.

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

The right to a reserved share is a hereditary right which is acquired upon the testator's death. A forced heir may make a declaration of acceptance or waiver of a reserved share orally before any municipal court, before the probate court or the notary public conducting the probate proceedings, or may present a certified document containing a declaration of succession to the probate court or the notary public conducting the probate proceedings.
The right to a reserved share is exercised in probate proceedings only at the request of a forced heir – if, in probate proceedings, a forced heir does not claim a reserved share, the court or the notary public is not required to establish his/her right to a reserved share.

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)

Probate proceedings are non-contentious proceedings to establish who the testator's heirs are, what constitutes the testator's estate and what other rights in respect of the estate belong to the heirs, legatees and other persons.

Probate proceedings are conducted by a municipal court or a notary public, as a trustee of the court. A municipal court having territorial jurisdiction to conduct probate proceedings is also called a probate court. Territorial jurisdiction of the municipal court to conduct probate proceedings is determined according to the testator's domicile at the time of death and, subordinately, according to the place of residence, the place where the predominant part of his /her estate is located in the Republic of Croatia or according to the place where the testator is registered in the Register of Citizens.
Probate proceedings are instituted *ex officio* after the court receives a death certificate, an excerpt from a register of deaths, or an equivalent document. The court entrusts the conduct of probate proceedings to a notary public with his/her registered office in its territory, delivers the death certificate to him/her and sets a time frame for the conduct of the proceedings. A notary public conducts the proceedings as a trustee of the court pursuant to a court decision entrusting the conduct of the proceedings to him/her and pursuant to the provisions of the Succession Act. As a rule, probate proceedings are conducted by a notary public as a trustee of the court and only exceptionally by the court.
Where a notary public conducts actions in probate proceedings as a trustee of the court, he/she is authorised, as a judge or a municipal court adviser would be, to take all the necessary actions in the proceedings and make all decisions except those in respect of which the Succession Act prescribes otherwise. If, in proceedings before a notary public, the parties dispute the facts on which one of their rights depends (e.g. the right of succession, the size of the inheritance share, etc.), or on which the composition of the estate or the subject of the legacy depends, the notary public must return the file to the court in order for the court to decide on a stay of the proceedings and instruct the parties to take civil or administrative action. If, in proceedings before a notary public, the parties dispute the facts on which the right to a testamentary legacy or other right depends, the notary public must return the file to the court, which will instruct the parties in that case to take civil or administrative action but will not stay the probate proceedings. In specific cases provided for by the Act (deciding on the separation of the estate from an heir's property, on the right of co-heirs who had lived or earned in a union with the testator and on the division of household effects), the notary public may render decisions only with the consent of all parties to the proceedings, otherwise the notary public must also return the file to the court. A court which has entrusted the conduct of probate proceedings to a notary public monitors his/her work on an ongoing basis.
A probate hearing is the main part of probate proceedings, and one or more such hearings may be held.
A probate hearing is not held if the deceased has left no estate or if the testator has left only movable property and equivalent rights, and none of the persons called to inherit demands that probate proceedings be conducted.
The parties (heirs, legatees, other persons exercising a right in respect of the estate), persons who might lawfully lay a claim to the inheritance (where a will exists), the executor of the will (if designated) and other interested persons are summoned to a probate hearing. In the summons to a hearing, the court or notary public will notify interested persons of the initiation of proceedings and of whether any will has been presented to him/her/it, and will summon interested persons to immediately present a written will or a document certifying the oral will, if it is in their possession, or to name the witnesses to the oral will. Such interested persons will be specifically advised in the summons that, until a first-instance decision on succession is rendered, they may make a declaration of waiver of the succession orally at the hearing or publicly by a certified document and that, by failing to appear at the hearing or make such a declaration, they will be deemed to wish to be heirs.
Any issues relevant to rendering a decision in probate proceedings, in particular the right to the inheritance, the size of the inheritance share and the right to legacies, will be discussed at a probate hearing. The court or the notary public renders a decision based on the results of all hearings. The court or the notary public is authorised to establish facts which the parties to the proceedings have not presented and also to present evidence which they have not proposed, if the court or the notary public finds that such facts and evidence are relevant to decision making. The court or the notary public decides on the rights, as a rule, after making it possible for the interested persons to make necessary declarations. The rights of any persons who, although duly summoned, have not appeared at the hearing will be deliberated on by the court or the notary public based on the information available to the court or the notary public, taking into account written declarations of such persons arriving until a decision is reached.
Declarations of succession are declarations by which an heir accepts or waives the succession. Anyone is authorised, but no one is obliged, to make a declaration of succession. A person who has not made a declaration of waiver of the succession is deemed to wish to be an heir. A person who has made a valid declaration of acceptance of the succession may not waive it afterwards. The court or the notary public will not require anyone to make a declaration of succession, but an heir who wishes to make such declaration may do so orally before the probate court or the notary public conducting the probate proceedings or before any other municipal court, or by presenting a certified document containing a declaration of succession to the probate court or the notary public conducting the probate proceedings. In making a declaration of waiver of the succession, the court or the notary public must warn the heir of the consequences of such declaration and must advise the heir that a waiver of the succession may be made in his/her own name only, as well as in his/her own name and in the name of his/her descendants.
The court will stay the probate proceedings and instruct the parties to take civil or administrative action if the parties dispute the facts on which one of their rights, the composition of the estate or the subject of the legacy depends. The party whose right is considered by the court as less plausible will be instructed to take civil or administrative action. If the parties dispute the facts on which the right to a testamentary legacy or other right depends, the court will instruct the parties to take civil or administrative action, but will not stay the probate proceedings.
On completion of the probate proceedings, the court or the notary public will render a decision on succession. Since, under Croatian law, succession is effected *ipso iure* at the time of the testator's death, a decision on succession is of a declaratory nature. The decision defines who has become heir after the testator's death and what rights have been acquired by other persons. The contents of the decision are laid down by the Succession Act, and the decision contains information about: the testator (surname and name, personal identification number, name of one of the parents, date of birth, nationality, and for people who died in marriage their surname before marriage); the composition of the estate (designation of real estate with details from land books required for registration; designation of movable property and other rights which the court has found to be part of the estate); heirs (surname and name, personal identification number, domicile, heir's relationship to the testator, whether they inherit as a legitimate or testamentary heir; if there are several heirs, the inheritance share of each heir expressed by fraction); limitation or encumbrance on the heir's rights (whether the heir's right is subject to a condition, a time limit or an instruction and if so, whether and how it is otherwise limited or encumbered and to whose benefit); persons entitled to a legacy or some other right arising from the estate, with an exact designation of such right (person's surname and name, personal identification number, domicile). A decision on succession is delivered to all heirs and legatees, as well as to persons who have applied for succession during the proceedings; on becoming final, it is also delivered to the competent tax authority. In a decision on succession, the court or the notary public will instruct that, once the decision on succession becomes final, requisite entries be made in the land register in accordance with the rules of the land registry law and that the movable property which is in the safekeeping of the court, the notary public or, on their instruction, a third person be handed over to the authorised persons.
Before rendering a decision on succession, the court or the notary public may, upon a legatee's request, render a separate decision on the legacy, provided that such legacy is not contested by the heirs. Where the composition of the estate is only partly undisputed, a partial decision on succession may be rendered to establish the heirs and legatees and what is not disputed as being part of the estate.
A decision brought by a notary public, as a trustee of the court in probate proceedings, may be subject to objection. An objection is lodged to the notary public within eight days of decision delivery to the parties, and the notary public is required to submit it without delay to the competent municipal court, together with the file. Objections are deliberated by a single judge. Any untimely, incomplete or inadmissible objections will be overruled by the court. In

deciding on an objection against a decision brought by a notary public, the court may keep the decision in force in whole or in part or rescind it. Where the decision is rescinded (in whole or in part), the court itself will deliberate on the rescinded part of the decision. A court decision rescinding the notarial decision in whole or in part may not be subject to individual appeal. A decision on the objection will be served on the parties and the notary public.
Decisions rendered by a first-instance court in probate proceedings may be subject to appeal if not provided for otherwise by the Succession Act. An appeal may be lodged within fifteen days of delivery of the first-instance court decision. An appeal may be lodged to the first-instance court which, deciding on the appeal lodged in a timely fashion, may render a new decision altering the contested decision, provided that it does not violate the rights of other persons which are based on that decision. If the first-instance court does not alter its decision, it will send the appeal to the second-instance court, irrespective of whether the appeal has been lodged within the time limit laid down by law. As a rule, the second-instance court decides only on appeals lodged in a timely fashion, but it can also take into consideration an appeal not lodged in good time, provided that that does not violate the rights of other persons based on the contested decision.
Extraordinary legal remedies are not permitted in probate proceedings.

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

One becomes an heir, either legitimate o testamentary, *ipso iure* (by operation of law) at the time of the testator's death. At that time, the heir acquires a hereditary right and the deceased's estate passes to him/her by force of law, becoming his/her inheritance. A declaration of acceptance of the succession is not required for acquiring a hereditary right. An heir who does not wish to be an heir is entitled to waive a succession until a first-instance decision on succession is rendered.
A legatee acquires a right to a legacy at the moment of the testator's death.
Probate proceedings establishing who the testator's heirs are, what constitutes the testator's estate and what other rights in respect of the estate attach to the heirs, legatees and other persons, are described in the answer to question No 6 relating to probate proceedings.

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

Heirs who have not waived the succession are jointly and severally liable for the testator's debts, each up to the value of his/her inheritance share.

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

For the purposes of registration in the land register, the following documents need to be submitted to the Land Register Department of the Municipal Court in whose territory the property is located:
a proposal for registration;
a document on the basis of which title is obtained (the legal basis for obtaining title – an agreement of sale, a contract of gift, a maintenance agreement, a decision on succession, etc.) in original or a certified transcript;
proof of the nationality of the title's transferee (a citizenship certificate, a certified copy of the passport, etc.) or proof of the status of the legal person (an extract from the register of companies) if the transferee is a foreign legal person;
where an applicant is represented by an attorney, a power of attorney needs to be provided in original or certified copy;
if an applicant has not designated an attorney to represent him/her and he/she is abroad, the applicant is obliged to designate an attorney resident in Croatia to receive documents;
proof of payment of a court fee of the amount of HRK 200.00, heading No 16, and a stamp duty of HRK 50.00, heading No 15, in accordance with the Court Fees Act (NN Nos 74/95, 57/96, 137/02, 26/03, 125/11, 112/12 and 157/13).

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?

Mandatory appointment of an administrator of the estate is not provided for by Croatian law. The reason for it is that the estate passes to the heirs by operation of law at the time the succession is opened (when the testator dies or is declared dead).
However, Croatian law stipulates that, in specific cases, the probate court will appoint a temporary guardian of the estate. It will do so when heirs are unknown or their whereabouts are unknown or they are out of reach, and in other cases as necessary. The temporary guardian of the estate is authorised to sue or be sued, collect claims or pay debts on behalf of the heirs and represent the heirs. Where necessary, the court may define special rights and duties of the guardian of the estate. The court may also appoint a guardian of the estate which has been separated from the heirs' property at the request of the testator's creditors.

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

The estate is administered by the heirs, with the exception of that which has been entrusted to the executor of the will or guardian of the estate.
The testator may designate by will one or more executors of the will. A person designated as an executor of the will is not required to accept such duties. The duties of the executor of the will are specified by the testator in the will. If the testator has not made a specific instruction, the duties of the executor are in particular to:
take care and do what is necessary for the safekeeping of the estate on behalf and for the account of the heirs;
administer the estate;
do what is necessary for the payment of debts and legacies on behalf and for the account of the heirs.
In doing so, the executor must take care in every respect that the will is executed as desired by the testator.

9.3 What powers does an administrator have?

Under Croatian law, an administrator is not appointed as a rule. The reason for it is that the estate passes to heirs by operation of law at the time the succession is opened (when the testator dies or is declared dead). The heir administers and disposes of everything that constitutes the inheritance. If there are several heirs, until it is determined what shares of the inheritance right belong to each heir, the co-heirs administer and dispose of everything that constitutes the inheritance as joint owners, with the exception of that which has been entrusted to the executor of the will or guardian of the estate.
After a final decision on succession determines what shares of the inheritance right belong to each heir, everything that until then has been common property is administered and disposed of by the co-heirs, up to the time of estate dissolution, according to the rules under which coheirs administer and dispose of property, with the exception of that which has been entrusted to the executor of the will or guardian of the estate.

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 the course of proceedings, if an executor of the will has been designated, the court will issue to him/her, at his/her request and without delay, a certificate proving the executor's capacity and powers, with an instruction to anyone that the executor's declarations are to be taken as if they were the testator's own. Whoever acts in good faith, in accordance with the declaration of the person who has identified himself/herself with a court certificate as being the executor of the will, will not be liable for any resulting damage to the heirs. If the court dismisses the executor of the will, he/she is obliged to return to the court, without delay, the certificate proving his/her capacity and powers, or he/she will be liable for any damage that may result from it.

On completion of the probate proceedings, a decision on succession is rendered. That decision determines who has become the testator's heir upon his/her death and what rights have been acquired thereby by other persons as well. Since, under Croatian law, one becomes an heir *ipso iure*, the purpose of establishing who the heir is is not to acquire the inheritance right or to acquire the inheritance itself (both have happened at the time of the testator's death), but only to enable and facilitate the exercise of the rights and obligations acquired by inheritance.
The effect of the final decision on succession is that the final decision on succession is deemed to have determined the composition of the estate, who the testator's heir is, the size of the inheritance share that belongs to him/her, whether his/her inheritance right is limited or encumbered and if so, how, as well as whether there are any rights to legacies and if so, which.
What is determined by the final decision on succession may be contested by a person who, under the provisions of the Succession Act, is not bound by the finality of the decision on succession, by civil action with the persons benefiting from the finding whose veracity he/she contests.
The final decision on succession is not binding on persons claiming entitlement to a right to what has been determined as being part of the estate, provided that they have not participated in the probate hearing as parties and have not been duly summoned to it in person either. Also, such decision is not binding on persons who claim that because of the testator's death they are entitled to the inheritance right based on the will or law, or that they are entitled to a legacy, provided that they have not participated in the probate hearing as parties and have not been duly summoned to it in person either.
By way of exception, persons who have participated in the probate hearing as parties or have been duly summoned to it are not bound by the final decision on succession in respect of any rights to their benefit arising out of a will found subsequently; in respect of the rights determined in civil or administrative proceedings (which they have been instructed to institute) after the decision on succession becomes final; provided that the prerequisites under which they might require in civil action that the proceedings be repeated have been fulfilled.

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Succession - Italy

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

Dispositions of property upon death can be drafted only by means of a will. Joint wills and agreements as to future successions are not permitted.
Testamentary dispositions can take the form of either:
designation of an heir, through which the testator disposes of the entire estate or a portion thereof without specifying the assets subject to that disposition;
legacy, through which the testator disposes of one or more specifically identified assets.

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

Testamentary dispositions do not need to be registered, irrespective of the form used.
In the case of a public will, which is a will drawn up in the form of a notarial deed, the notary must transfer the will following the death of the testator from the register of last wills and testaments to the register of transactions *inter vivos* and register the certificate of transfer.
In the case of a holographic will, which is a will drawn up privately, this must be presented to a notary, following the death of the testator, so that the notary can ensure it has legal effect by means of a record of publication, which will then be registered.

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

A testator may legally dispose of his entire estate. His spouse, his children and their descendants and (if there are no children) his parents are entitled to a ‘reserved’ portion, which is a minimum share of the estate reserved for them, but a will that does not observe this right is still valid and effective, provided it is not contested by the heirs described above. If the will is not contested or any proceedings to contest it are found to be without foundation, the will retains its full force and effect.

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

If there is no will, the rules on legal succession in the Civil Code apply. There can be cases where there is a will but it disposes of only a portion of the estate: for the remainder, the rules of legal succession will apply alongside those governing testamentary disposition. The individuals who inherit by law are the spouse, children, parents, siblings, and relatives up to the sixth degree. The portions of the estate inherited depend on which of the individuals listed above actually exist. The existence of children excludes both parents and siblings, and more distant relatives.

5 What type of authority is competent:

5.1 in matters of succession?

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

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

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

An inheritance devolves to the heir on the basis of a declaration of acceptance, while a legacy devolves automatically, provided that it is not waived.
Acceptance of an inheritance cannot be partial, and can be express (by means of a corresponding declaration) or tacit (which happens when the heir carries out an act that could not be carried out unless that individual were the heir, such as the sale of an item of succession property). The declaration of acceptance or renunciation occurs through a declaration issued by a notary or a clerk of the competent court in the jurisdiction where the succession is opened. The same rules apply in the case of heirs to reserved portions, who may not accept or waive only the reserved portion. Such heirs can, however, waive their rights to a reserved portion of an estate in cases where that portion has been damaged. If an heir to a reserved portion has been excluded from

the estate or has been bequeathed a share of the estate smaller than the portion reserved for him, he may bring action solely in order to assert a right to receive the reserved portion.

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)

There is no single procedure defined by law.

The succession opens when the testator dies. With reference to that date and on the basis of the will or the applicable legal rules, the persons designated as heirs or legatees are identified. Those individuals are then responsible for taking the necessary steps to issue declarations of acceptance or renunciation, which are then used to establish to whom and in what proportion the succession property is bequeathed.

If there are several joint owners, each of these individuals has the right to request the division of the estate, which can take place by means of a contract or through a request to the courts in ordinary civil proceedings to deliver a judgment dividing the estate.

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

Legatees automatically acquire their status unless they renounce the inheritance. The status of heir is acquired through an express declaration of acceptance or by means of an act that constitutes tacit acceptance. Persons designated as heirs who are in possession of succession property become heirs automatically after three months have passed following the date on which the succession opened.

Express acceptance, which must be provided within ten years of the opening of the succession, may take the form of acceptance pure and simple or acceptance under benefit of inventory in order to limit liability for the deceased’s debts.

Acceptance of succession devolved to minors and other individuals who are subject to a legal incapacity must be made expressly and under benefit of inventory.

The effects of acceptance of the estate or legacy are retroactive to the time when the succession is opened.

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

The heirs are liable for all debts of the deceased, in proportion to the value of their respective portions of the inheritance. Conversely, legatees are not liable for these debts.

The heir pure and simple has unlimited personal liability for the deceased’s debts, and is therefore liable even if the amount of the debts exceeds the value of the assets inherited.

If the succession has been accepted under benefit of inventory, the heir is liable for the deceased’s debts only up to the value of the assets inherited.

If the succession has been accepted under benefit of inventory, a report must be drafted describing and stating the value of all property forming the assets and all liabilities: the heir must be authorised by the courts to undertake any actions to dispose of succession property and this authorisation will be granted only if the actions in question are in line with the interests of the creditors under the succession.

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

Heirs and legatees are required to provide the tax authorities with a Declaration of Succession, which contains information about all succession assets including real property, with the corresponding land registry details. A copy of the Declaration of Succession is used to transfer land registry records, and thus register any properties in the names of the heirs or legatees who are now the owners.

The procedure to be applied for entry of the acquisition of property inherited by heirs or legatees in the Property Registers is different for the two categories. For a legatee, acquisition of ownership is entered on the basis of a copy of the will stating that legacy. For an heir, the express declaration of acceptance or the action establishing tacit acceptance is recorded.

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?

Appointment of an administrator is not mandatory.

Anyone drafting a will can name an executor, who is responsible for administering the assets only to the extent necessary for performance of that role.

The law indicates the individuals responsible for administering an estate if the heirs are subject to a legal incapacity.

If none of the persons designated as heirs accepts the succession, it is possible to ask the courts to appoint a curator for the estate in abeyance, who will administer the estate assets until an initial declaration of acceptance is issued, at which point the office of curator will automatically cease.

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

If a legatee is expecting that action be taken by the heirs, it is those individuals who are responsible for executing the provisions of the will.

The testator can name an executor, who will then be responsible for ensuring that the provisions of the will are observed.

The assets of the estate are administered by the individuals who are required to execute the provisions of the will, until such time as those tasks have been completed in full.

9.3 What powers does an administrator have?

In general, administrators only have powers of ordinary management, so that they can protect the assets and their value. Authorisation from the courts is required for actions associated with disposals of property or extraordinary administration.

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 municipality in which the deceased was born or was resident issues a Death Certificate, an extract from the Register of Deaths and a Certificate of Family Status, which contain the information relating to the death of the individual, his personal details and family relationships.

The status of heir or legatee is not attested by any documents issued by the public authorities.

Anyone wishing to assert the status of an heir or legatee can provide a Notarised Document, which is a declaration made before a notary by two witnesses who are not involved in the succession, subject to criminal liability. Public authorities also accept a Statement in lieu of a Notarised Document, drafted by the individual concerned, still subject to criminal liability.

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Succession - Cyprus

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

In principle, domestic law makes no provision for joint wills. What actually happens is that in drawing up their will, spouses may appoint each other as their sole heirs.

Wills are drawn up and executed in accordance with the provisions of Article 23 of Chapter 195.

Wills must be in writing and signed by the testator or by another person at the request and in the presence of the testator. They must also be signed in the presence of at least two witnesses, all present at the same time, to confirm and endorse the will in the presence of the testator. If the will consists of more than one page, all the pages must be signed or initialled.

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

A will may either:

(a) be filed at the Registry of the province of the testator, pursuant to the provisions of Article 9 of Chapter 189;

(b) be kept at the office of the testator's solicitor; or

(c) be kept by the testator him/herself or any other person they designate for this purpose.

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

The reserved share principle is included in domestic law as is regulated by Article 41 of Chapter 195. Article 51 of Chapter 195 is also relevant.

Children have the right to share up to 25% of the net value of the estate. If there is no child, but a surviving spouse or parent (father or mother), they have the right to share up to 50%, whereas in all other cases, the entire inheritance may be devolved.

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

In the absence of the disposition of property upon death, the inheritance will pass in accordance with the provisions of Article 44 *et seq.* of Chapter 195.

If there are children and a spouse, the net value of the inheritance will be distributed to the spouse and children, in equal parts. If there are no children or descendants, the share of the spouse will increase, depending whether there are other relatives up to the fourth degree of kinship. In particular, if there are siblings or parents of the deceased, the share of a spouse amounts to 50% of the net value and if there are no relatives up to the fourth degree of kinship, the spouse is entitled to ¾ of the inheritance. In all other cases, the whole of the estate will devolve upon the spouse.

5 What type of authority is competent:

5.1 in matters of succession?

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

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

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

In all the above cases the competent authority is the District Court of the last domicile of the testator/deceased.

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)

Filing of application

Submission of temporary exemption approved by the Tax Registrar

Issue of concession deed

Registration of inventory

Paying off any debts on the estate, including tax liabilities

Distribution of estate

Registration of final accounts

Domestic law makes no provision for a succession process initiated *ex officio* by the Court.

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

A person may become an heir if he/she is a relative of the deceased up to the sixth degree of kinship. A relevant provision is made in Article 44 *et seq.* of Chapter 195 and the First and Second Annex to Chapter 195.

A person may become an heir if an estate is devolved upon him/her by the testator in his/her will.

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

In accordance with domestic law, heirs are not held liable for the debts of the deceased. Debts are incurred solely by the estate, which will be distributed to the heirs/legatees only when such debts (including tax liabilities) are repaid. A relevant provision is made in Article 41(b) and 42 of Chapter 189.

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

If the term 'registration' of property means transfer of the property of the deceased to the heirs/legatees, the required documents are:

the deed of concession;

certificate of settlement of tax liabilities issued by the Tax Registrar and authorisation for the transfer of property;

certificate of settlement of real estate/capital gains tax liabilities;

receipt and certificate of payment of municipal and sewerage charges and solemn statement of distribution by the administrator and/or executor;

any other document requested by the Land Registry and/or the Tax Registrar.

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 mandatory for the purpose of distribution of the estate. The appointment is made by court order upon request. The application for administration is made pursuant to Chapter 189 including, but not limited to, Articles 18, 19, 20, 29, 49 and Chapter 192. The application must be accompanied by a sworn statement from the intended administrator or executor, a sworn statement from a guarantor, where required, and collateral, where required. It must also be accompanied by a death and inheritance certificate issued by the head of the municipality of the area in which the deceased resided and the consent of the heirs to the appointment of an administrator. In all other respects the procedure described in question 6 above shall be followed.

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

The right to execute the disposition of property upon the death of the deceased is vested in the executor and if the executor dies or is not interested, the right is vested in anyone with a legal interest in the estate, e.g. a legatee or heir.

9.3 What powers does an administrator have?

The powers of the administrator are described in Article 41 of Chapter 189.

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?

These documents are the deed of concession in which the administrator and/or the executor are named. The names of the beneficiaries are listed on the application for administration and/or validating of the will and the death and inheritance certificate issued by the head of the municipality of the area in which the deceased resided.

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Succession - Latvia

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?

Pursuant to Article 418 of the Civil Law (*Civillikums*) a will is any unilateral instruction drawn up by a person in case of their death regarding all of their property, a part of their property, or individual items or rights. Pursuant to Article 420 of the Civil Law any person may draw up a will, with the exception of minors. Minors who have reached the age of 16 may draw up a will with respect to their independent property (Article 195 of the Civil Law). Those under trusteeship may also draw up a will. However, pursuant to Article 421 of the Civil Law, persons unable to express their intention are incapable of drawing up a will.

The Civil Law stipulates that wills, by virtue of their form, are either public or private.

Public wills are drawn up before either a notary or a family tribunal. A public will must be drawn up in the presence of the testator. The original of a public will is deemed to be that entered in the register of documents of a notary or a consul or in the register of wills before a family tribunal. The testator is given a copy of the will after the original has been signed.

With respect to private wills, pursuant to Articles 445 and 446 of the Civil Law, for such a will to be valid assurance is required that it has been prepared by the testator and that it correctly reflects his or her last intention. Private wills are drawn up in writing. The entire will must be written and signed by the testator by his or her own hand.

Under Article 604 of the Civil Law two or more persons may make a joint reciprocal will (*savstarpējs testaments*) by which they reciprocally appoint each other as heir in a single document.. However, if under such a will the appointment of one person as heir is subject to the condition that the appointment of the other person must exist and must be valid, so that the two appointments stand or fall together, then the will is a joint mutual will (*korrespektīvs testaments*).

Pursuant to Article 639 of the Civil Law, contractual inheritance is established by an agreement in accordance with which one party grants the rights to his or her future inheritance or a part thereof to another party, or several parties grant such rights to each other. This type of contract is termed an agreement on succession. In an agreement on succession, one party may also grant a legacy to another party or to a third person. Exclusion from an inheritance is not permitted in an agreement on succession.

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

If a disposition of property upon death is drawn up as a public document (notarial act, a will certified by a family tribunal) it is registered in the public register of wills. Dispositions of property upon death which are drawn up in private are not registered unless they have been handed over for safe-keeping to a certified notary or a family tribunal.

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

A testator may freely determine the disposition of their whole estate in the event of their death, with the restriction that those persons entitled to a reserved share are bequeathed the said reserved share. Persons entitled to a reserved share have only the right of claim to the transfer of the reserved share in monetary form.

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

Pursuant to the Civil Law spouses, next-of-kin and adoptees are entitled to inherit.

An adoptee and his or her descendants inherit from the adopter or his or her relatives. The descendants of an adoptee inherit from the adoptee, as do the adopter or his or her relatives. An heir ranked lower in the order of succession does not inherit if an heir ranked higher in the order of succession has expressed his or her intention to inherit.

A spouse inherits together with an heir ranked first, second or third in the order of succession. When inheriting together with an heir ranked first, the spouse receives a share equivalent to that of the offspring if the number of offspring who have expressed the intention to inherit is less than four, but if there are four or more offspring who have expressed the intention to inherit, the spouse inherits one quarter. When inheriting together with heirs ranked second or third, the spouse receives half of the estate. A spouse receives the entire estate if there are no heirs ranked first, second or third or if they fail to express their intention to inherit.

The next-of-kin of the deceased inherit in a specific order, which is based partly on the type of kinship and partly on the degree of kinship. For the purposes of the order of succession legal heirs fall under four distinct ranks:

under the first rank, without distinction as to the degree of kinship, all those descendants of the deceased inherit between whom, on the one part, and the deceased, on the other part, there are no other descendants who would be entitled to inherit;

under the second rank, the ascendants of the nearest degree of kinship to the deceased inherit, as do the deceased's full siblings and the children of full siblings who have predeceased the person who has recently died;

under the third rank, the deceased's half siblings inherit, as do the children of those half siblings who have predeceased the dead person;

under the fourth rank, the remaining collateral kin of the nearest degree of kinship inherit, without distinction between full and partial consanguinity.

5 What type of authority is competent:

5.1 in matters of succession?

Certified notary (*zvērināts notārs*).

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

Certified notary.

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

Certified notary.

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

Certified notary.

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)

Once the succession has been opened, the heir must express his or her intention to accept the estate. This is done by submitting an inheritance application to a certified notary. The certified notary initiates the succession procedure, announces the opening of the succession, identifies the persons entitled to the estate and issues an inheritance certificate.

If succession takes place under a disposition of property, this must be submitted to a certified notary who will read it and deem it to have entered into force in accordance with legislation. Here too the heir must express his or her intention to accept the estate. If a legatee has been appointed he or she will also be indicated on the inheritance certificate.

Latvian legislation does not provide for the liquidation and division of the property of the deceased. Provision of this kind may be made by a testator in a disposition of property, but such cases are not common. Once the certified notary has confirmed the heirs entitled to the estate, the heirs may remain joint owners of the inherited property or divide the estate by entering into a contract on the sharing of the estate. If only one or some of the heirs wish to divide the estate while the others disagree, the parties wishing to divide the estate may bring a case to court regarding division.

The only case where the law provides for the sale of the deceased's property is where there are no heirs and the property has been recognised as *bona vacantia*, falling under the jurisdiction of the state. If there are creditors the property is sold at auction by a certified bailiff. If there are no creditors the State Revenue Service adopts a decision on the disposal of the property.

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

With reference to legatees, under the definition provided in Article 500 of the Civil Law, where a person has been bequeathed only a individual object of an estate rather than the whole estate or a share of the whole estate, the bequest is called a legacy and the person to whom it has been bequeathed is a legatee.

This person must submit an inheritance application to a certified notary. Where a disposition of property exists this must also be submitted to and read by the certified notary. The certified notary issues an inheritance certificate to the heirs and legatees after the end of the period for acceptance of the inheritance as declared by the notary (no less than 3 months) or as stipulated in the Civil Law (one year after the opening of the succession or after apprehension of the opening of the succession).

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

The Civil Law lays down that with the acceptance and acquisition of an inheritance all the rights and obligations of the deceased, insofar as they are not extinguished upon death, devolve to the heir. Heirs are liable for the debts of the deceased, including with their own property if the inherited property is insufficient. An heir who has accepted an estate with the benefit of inventory (*ar inventāra tiesību*) is liable for the debts of the deceased and other claims against him or her only to the extent of the estate.

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

The inheritance certificate and the registration application are submitted to the land registry.

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 following persons may be appointed:

after the opening of the succession – a trustee for the estate. Upon the request of the heirs or in certain cases stipulated by law (for example where an estate is heavily encumbered with debts, where there are no heirs or they cannot be contacted, etc.), trusteeship for the estate will be established by a certified notary by means of a separate deed which is sent to a family tribunal for the appointment of a trustee;

executor of the will – this takes place during the testator’s lifetime when he or she draws up the will.

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

A will which has entered into legal effect is executed by the executor of the will, appointed for this purpose either in the will itself or through another special testamentary instrument. Where an executor has not been appointed the will is executed by an heir appointed in the will. If, however, there is no direct testamentary heir, the will is executed by a trustee of the estate appointed by a family tribunal on the basis of a certified notary’s decision.

9.3 What powers does an administrator have?

The legal status of the executor of a will and the limits of his or her rights and duties are defined by the intention of the testator as expressed in the will. In the absence of any further instructions on the part of the testator, the executor of the will must only ensure that the last will of the testator is observed and executed and provide for the settlement of the estate and its distribution among the heirs and legatees, to the extent necessary for this purpose.

Trustees for an estate act independently in the administration and representation of the estate and on behalf of the estate. Trustees administer an estate with the same care and diligence with which they as solicitous proprietors would administer their own affairs. During their period of administration trustees provide annual statements to a family tribunal, and once the estate has been distributed to the heirs or the trusteeship is terminated for other reasons a final statement must be provided. The trusteeship and the trustee's right to act on behalf of the estate come to an end when a notary issues an inheritance certificate.

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?

A certified notary issues an inheritance certificate in the form of a notarial act. The legitimacy of a notarial act cannot be called into question. It may be contested by way of a separate action.

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Succession - Lithuania

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?

The disposition of property upon death is drawn up in the form of a will in accordance with the Civil Code of the Republic of Lithuania (*Lietuvos Respublikos civilinis kodeksas*). A will may be official (drawn up in writing in duplicate certified by either a notary or a consular official of the Republic of Lithuania in another country) or private (a holographic will specifying the first name and surname of the testator, the date (day, month and year) and place of the issue of the will, indicating the testator's wishes and signed by the testator; this type of will may be drawn up in any language). Spouses may draw up a joint will of spouses in which both spouses mutually assign each other as heirs, and upon the death of one of the spouses the surviving spouse inherits the property of the deceased spouse in full (including the community of marital property), except for the reserved share.

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

An official will is certified and registered in the notarial register in the presence of the testator. One copy of the will is held by the testator and the other copy remains with the certifying body. The testator may entrust a private will for safekeeping to a notary or a consular official of the Republic of Lithuania in a foreign country. The register of wills drawn up in the Republic of Lithuania is managed by the Central Mortgage Office (*Centrinė hipotekos įstaiga*). Notaries and consular officials must notify the Central Mortgage Office within three working days of any wills certified, accepted for safekeeping or annulled. The notification must indicate the first name and surname, personal identification number and place of residence of the testator, and the date and place of the issue of the will, its type and the location at which it is being kept. The content of the will does not need to be specified.

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

Yes, the Civil Code provides for the right to the reserved share: the deceased's children (adopted children), spouse and parents (adoptive parents) who were financially dependent on the deceased on the day of his or her death inherit, irrespective of the content of the will, half of the share that each of them would have been entitled to by intestate succession (the reserved share) unless more is bequeathed in the will. The reserved share is determined on the basis of the value of the estate, including ordinary household furnishings and equipment.

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

In the absence of a will, the estate is inherited by intestate succession. Where inheritance takes place through intestate succession, the following persons are beneficiaries of the estate in equal portions: first degree heirs – the deceased's children, including adopted children and children born after the deceased's death; second degree heirs – the deceased's parents (adoptive parents), grandchildren; third degree heirs – the deceased's paternal and maternal grandparents, the deceased's great grandchildren; fourth degree heirs – the deceased's siblings, and paternal and maternal great grandparents; fifth degree heirs – children of the deceased's siblings (nephews and nieces), and siblings of the deceased's parents (uncles and aunts); sixth degree heirs – children of the deceased's parents' siblings (cousins). Second degree heirs inherit by intestate succession only in the absence of first degree heirs, in the event of the latter's non-acceptance or waiver of succession, or in cases where all first-degree heirs have been deprived of the right to inherit. The third, fourth, fifth and sixth degree heirs inherit in the absence of heirs of a higher degree or in the event of the latter's waiver of succession or where they have been deprived of the right to inherit. Adopted children and their descendants receiving an inheritance following the death of their adoptive parent or his or her relatives are treated as the equivalent of the children of the adoptive parent and their descendants. They do not inherit by intestate succession after the death of their natural parents and other blood relatives of a higher degree in the line of descent, likewise after the death of their blood siblings. Adoptive parents and their relatives receiving an inheritance after the death of their adoptive child or his or her descendants are treated as the equivalent of natural parents and other blood relatives. The natural parents of an adopted child and other blood relatives of a higher degree in the line of descent do not inherit by intestate

succession after the death of the adopted child or his or her descendants. Children born to married parents or to parents whose marriage has been annulled are entitled to inherit by intestate succession, as are children born out of wedlock whose paternity has been established in accordance with the law. In cases where a parent of grandchildren or great grandchildren of the deceased would have been entitled to inherit but has died at the time of the opening of the succession, the grandchildren or great grandchildren inherit by intestate succession together with the corresponding first and second degree heirs entitled to inherit. They inherit equal shares of that part of the estate which would have been inherited by their deceased father or mother through intestate succession. The surviving spouse of the deceased inherits through intestate succession or together with any first or second degree heirs. The spouse inherits one fourth of the inheritance together with the first degree heirs and where there are no more than three heirs apart from the spouse. Where there are more than three heirs, the spouse inherits in equal shares with the other heirs. If the spouse inherits together with second degree heirs, he or she is entitled to half of the inheritance. Where there are no first or second degree heirs, the spouse inherits the entire estate. Ordinary furnishings and household equipment pass to heirs by intestate succession irrespective of their degree of descent and their inherited share provided that they lived with the deceased for no less than a year up to his or her death.

5 What type of authority is competent:

5.1 in matters of succession?

The notary and the court at the place of the opening of the succession.

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

The notary at the place of the opening of the succession.

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

The notary at the place of the opening of the succession.

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

The notary at the place of the opening of the succession.

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)

In accordance with the Civil Code, a successor must accept a succession in order to acquire it. Acceptance may not be partial or subject to conditions or exceptions. A successor is deemed to have accepted a succession when he or she actually starts taking charge of the estate or has lodged an application on the acceptance of the succession with a notary at the place of the opening of the succession. A successor is deemed to have accepted a succession where he or she has started to take charge of the estate, treating it as his or her own property (where he or she takes charge of, uses, disposes of and oversees the estate, pays taxes and has applied to the court expressing the intention to accept the succession and appoint an administrator of the estate, etc.). A successor who has started to take charge of any part of the estate or even any individual items is deemed to have fully accepted the succession. A successor who has started to take charge of an estate has the right within the period laid down for the acceptance of the succession to waive his or her succession by lodging an application with a notary at the place of the opening of the succession. In such a case the successor is deemed to have taken charge of the estate in the interests of other beneficiaries. These steps must be taken within three months of the opening of the succession. Persons whose right to succession arises only subject to a waiver by other successors can express their agreement to accept the succession within three months of the day on which the right to acceptance arose. The time limit for acceptance of the succession may be extended by a court provided that it is recognised that the time limit was exceeded for serious reasons. The succession may also be accepted after the expiry of the time limit without applying to the court where this is agreed upon by all other successors who have accepted the succession. The notary is obliged to inform the Central Mortgage Office of the acceptance of the succession within three working days. The heir or legatee has the right to waive the succession within three months of the opening of the succession. The waiver may not be partial or subject to conditions or exceptions. A waiver of the succession has the same effect as non-acceptance of the succession. The successor waives the succession by lodging an application with a notary at the place of the opening of the succession. A waiver is not permitted where the successor has lodged an application with a notary at the place of the opening of the succession for the acceptance of the succession or for the issue of the certificate of succession. In the event that there are several beneficiaries, the estate inherited falls under the shared ownership of all the beneficiaries unless otherwise provided for in the will. No one can be forced to waive his or her right to separate the share they are entitled to from the inheritable estate. The estate is divided by the mutual agreement of the heirs. The estate may not be divided until the birth of the heir or legatee or if the testator has established in his or her will a certain period of joint possession by the successors of the inherited estate. This period may not exceed five years from the opening of the succession, except in cases where there are minors among the successors. In this event the testator may prohibit division of the estate until the successors concerned reach the age of eighteen. Successors may divide the inherited estate by mutual agreement before the successors' rights to property are registered in the public register. The division of immovable property is formalised by a notarial act, which must be registered in the public register. Should the successors fail to agree on the division of the property, the estate is divided by the court on the basis of actions brought by each successor. Divisible property is divided in kind and indivisible property devolves to one of the successors taking into account the nature of the property and the needs of the successor, while the other successors are compensated for the value of the property by means of other property or in cash. By mutual agreement of the beneficiaries the whole estate or separate items of property may be sold at auction and the proceeds divided among the beneficiaries, or the successors may bid amongst themselves for individual items of property, with each item devolving to the successor who makes the highest bid. The transfer of individual items of property to specific successors may be determined by mutual agreement by drawing lots.

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

The time of the opening of the succession is deemed to be the moment of death, or the day when a court judgment declaring the person deceased comes into effect, or the day of death indicated in the court judgment. To become an heir a person must accept the succession (either by actually taking charge of the inherited estate or applying to a notary at the place of the opening of the succession for acceptance of the succession). A legatee notifies his or her acceptance to the executor of the will (administrator of the estate), to a successor who has accepted the succession and is authorised to execute the legacy or to a notary at the place of the opening of the succession. Where the legacy involves the right to immovable property, an application must in all cases be lodged with a notary.

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

An heir who has accepted the succession by taking charge of the estate or by lodging an application with a notary is liable for the debts of the testator with the entirety of his or her property. Where the estate has been accepted by several heirs in the above manner, they are all jointly liable for the debts of the testator with the entirety of their property. The successor has the right to indicate in his or her application to a notary for the acceptance of the succession that he or she wishes to accept the estate on the basis of the inventory of the property. In such a case the successor is liable for the debts of the testator only with the inherited estate. If at least one successor has accepted the succession on the basis of the inventory, all other heirs are deemed to have accepted the succession in accordance with the inventory. The inventory may be also requested by the testator's creditors. If at the time of drawing up the inventory

the successor through his or her own fault failed to indicate the entirety of the estate making up the succession or concealed the testator's debtors, or where non-existing debts were included in the inventory on the successor's initiative, or the successor failed to meet his or her obligation to provide complete data for drawing up the inventory, this successor is liable for the debts of the testator with the entirety of his or her property.

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

The following immovable objects are recorded in the Register of Immovable Property if they have been categorised as individual objects of immovable property and assigned a unique number in accordance with the procedure set out in the Lithuanian Law on the land register (*Lietuvos Respublikos nekilnojamojo turto kadastro įstatymas*): plots of land, buildings, apartments in apartment blocks and premises. Applications to register immovable property in the Register of Immovable Property (*Nekilnojamojo turto registras*) must be accompanied by the following documents:

an application to register property (ownership or management) rights to the immovable property or to modify the data in the Register of Immovable Property relating to property rights;

documents recording in the immovable property cadastre cadastral data on an immovable object which has been categorised as an individual immovable cadastral object, and any documents amending this data (a decision by a public authority or a managing body, a court judgment, order, decision or decree, written transactions, documents from other state cadastres and registers or other documents stipulated in legislation or by the Government);

documents certifying acquisition of ownership of the property, the creation of property rights, restrictions on these rights and legal facts, and the donation, sale and purchase or lease of companies; notarised documents certifying the creation of property rights, restrictions on these rights and legal facts, submitted to a local registrar through the notary in electronic form;

documents identifying the person making the application, except in cases where the application is submitted by post or by electronic means or through a notary.

In the case of the succession of immovable property, where property rights are already registered in the Register of Immovable Property, the only document that the successor must submit to the Register is the certificate of succession received from the notary (or the certificate of ownership in the event of the death of one spouse where the entire property devolves to the surviving spouse). Entries recording the issue of a certificate of succession where immovable property is being inherited and/or a certificate of ownership where one spouse has died may also be made in the Register of Immovable Property further to receipt of a notification to this effect from a notary.

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?

Where the inherited estate is a sole proprietorship or a farmstead, or where the deceased’s debts might exceed the value of the estate, upon acceptance of the succession the successor can apply to a court at the place of the opening of the succession to appoint an administrator of the estate, or to appoint an administrator and to decide on conducting an auction or bankruptcy proceedings. In such a case the deceased’s debts are covered only by the estate. If the estate includes property requiring management (a sole proprietorship, a farmstead, securities, etc.) and this cannot be undertaken by the executor of the will or the successor, or if the deceased’s creditors bring an action before the acceptance of the succession, the district court appoints an administrator of the inheritable estate. Administration of the estate is established by means of a decision by the district court at the place of the opening of the succession. In its decision the court appoints an administrator of the estate and determines his or her remuneration.

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

A will is executed by the executor of the will or a successor appointed by the testator or by an administrator of the estate appointed by the court. Where the testator failed to appoint an executor, or the appointed executor or successor are unable to fulfil their duties, the district court at the place of the opening of the succession appoints an administrator of the estate to perform all the necessary tasks for the execution of the will. The executor of the will performs all the necessary tasks for the execution of the will. Pending the appointment of an administrator of the estate or the establishment of successors, the executor of the will undertakes the functions of a successor – taking charge of the estate, compiling the inventory, paying debts associated with the estate, recovering debts from the testator's debtors, providing due maintenance payments to dependents, performing searches for successors, establishing whether the successors accept the succession, etc.

9.3 What powers does an administrator have?

The administrator of the estate has the same rights and duties as the executor of the will and *mutatis mutandis* is subject to the provisions of property law laid down in the Civil Code governing the administration of property owned by or the activities of another person.

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?

After a period of three months following the opening of the succession, heirs or legatees may request that a notary at the place of the opening of the succession issue a certificate of succession. A certificate of succession is a document laid out in the form stipulated by the state certifying that the successor has accepted the succession and has acquired the right to ownership of the estate. It is important to note that pursuant to the Civil Code the right to ownership of an estate arises with the acceptance of the succession rather than the issue of the certificate of succession. Furthermore, obtaining the certificate of succession is the beneficiary's right, but not his or her obligation. The certificate of succession certifies the acceptance of the succession and provides legal grounds for the registration of property rights to the inherited immovable property. In accordance with the Lithuanian Code of Civil Procedure (*Lietuvos Respublikos civilinio proceso kodeksas*) a certificate of succession issued by a notary is considered official written evidence with a greater evidential value. The circumstances referred to in official written evidence are considered fully proven unless subsequently refuted by other case evidence, except for the testimonies of witnesses.

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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.

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Succession - Hungary

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?

a) wills

There are three main types of wills in the Hungarian legal system: authentic wills, written private wills and (as an exceptional type) oral wills (Section 7:13 of the Civil Code (Polgári Törvénykönyv)).

(aa) An authentic will must be drafted before a notary public. When an authentic will is drafted, the notary public applies the relevant special legal regulations (the provisions of the Act on public notaries applicable to notarial deeds).

ab) Hungarian law recognises three subtypes of *written private wills*:

- *holographic will*: this will is valid as regards form if it is entirely written and signed by the testator in his own hand (Section 7:17(1)*(a)* of the Civil Code);
- *will written by other persons (allographic will)*: such wills must be signed by the testator in the contemporaneous presence of two witnesses or, if they were signed previously, the testator must declare the signature to be his own before two witnesses in their contemporaneous presence. The witnesses must sign the will indicating their capacity as such. Typewritten wills are always considered to be allographic even if typed by the testator himself (Section 7:17(1)*(b)* of the Civil Code).
- *private will deposited with a notary public*: For such will to be valid in respect of form, the testator must sign the will (whether allographic or holographic) himself, then deposit it personally with a notary public, specifically marked as a will. Wills may be deposited with a notary public as an open document or sealed document (Section 7:17(1)*(c)* of the Civil Code).

As another formal requirement for the validity of all three types of private wills in respect of form, *the date when it was drafted* must be clearly indicated in the deed itself.

Within the category of written private wills there are special rules applicable to wills consisting of *several separate sheets*:

- If the will is holographic, each sheet must bear a sequential page number;
- If the will is allographic, in addition to the requirement of the sequential numbering of sheets, the testator and the two witnesses must sign each sheet (Section 7:17(2) of the Civil Code).

A written will may be made *in a language* that the testator can understand and

- write (in the case of holographic wills); and
- read (in the case of allographic wills).

Wills drafted in shorthand or another symbol or code writing other than normal writing are invalid (Section 7:16 of the Civil Code).

ac) Oral wills (nuncupative wills) can be made by persons who are in an extraordinary life-threatening situation where making a written will is not possible (Section 7:20 of the Civil Code). To make an oral will, the testator must orally express his will in its entirety in the contemporaneous presence of two witnesses in a language understood by the witnesses – or in sign language if the testator uses sign language – and concurrently announce that his oral statement constitutes his will (Section 7:21 of the Civil Code). The exceptional nature of oral wills is emphasised by the provision that such will becomes inoperative if the testator had the opportunity to make a written will without any difficulty during a period of thirty consecutive days following the cessation of the situation that justified the making of the oral will (Section 7:45 of the Civil Code).

b) special rules as to the form of joint wills

The Civil Code allows spouses to make joint wills during the term of their conjugal community (Section 7:23 of the Civil Code).

It should be noted that in addition to spouses, registered partners are also allowed to make joint wills, taking into account Section 3(1) of the Act regulating registered partnerships (Act XXIX of 2009).

Spouses (registered partners) may make joint wills in the following formats:

ba) in the form of an authentic will (notarized);

bb) in the form of a holographic private will: In this case, the deed is entirely written and signed by one of the testators in his or her own handwriting, and the other testator declares in the same document in a signed statement executed in his or her own handwriting that the document also contains his or her last will and testament.

bc) in an allographic form: In this case, the deed is signed by the testators in the contemporaneous presence of the other testator and two witnesses, or (if signed earlier) both testators declare separately in the contemporaneous presence of the other testator and the witnesses that the signature on the document is their own.

There are special rules applicable to the form of joint wills consisting of *several separate sheets*:

- If the will is written in the own handwriting of one of the testators, each sheet of the will must be numbered in sequence and signed by the other testator;
- If the will is allographic, in addition to the requirement of sequential numbering of the pages, the two testators and both witnesses must sign each sheet (Section 7:23(3) of the Civil Code).

c) agreement on succession

In Hungarian law, an agreement on succession is an agreement where one of the contracting parties (the testator) names the other party his heir *in exchange for maintenance, annuity or care* (Section 7:48 of the Civil Code).
Consequently, in Hungarian law an agreement on succession is always a contract for pecuniary interest. In the agreement on succession the testator may name the other contracting party his heir in respect of his entire estate or a specific part thereof or in respect of certain property. The maintenance, annuity or care offered in consideration may be granted to the testator or to a third party specified in the agreement. An agreement on succession is a disposition of property upon death only in respect of the contractual statement of the testator but not in respect of the other contracting party (the person providing maintenance, annuity or care).
The provisions governing written wills apply to the *formal validity requirements* of agreements on succession with the exception that the formal requirements of allographic wills apply to such agreements even if they are drafted in the handwriting of one of the parties (Section 7:49(1) of the Civil Code). Accordingly, an agreement on succession is formally valid if
- it is executed in an authentic instrument by a notary public (similarly to an authentic will), or
- it is executed in the manner required for allographic wills (that is, two witnesses are involved).
For the validity of an agreement on succession, the consent of *the legal representative and the approval of the guardian authority* is required if the party entering an agreement on succession as the testator is
- a minor of limited legal capacity or
a person whose legal capacity has been partially limited in respect of making legal statements relating to property (Section 7:49(2) of the Civil Code).

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

No. The validity of the disposition is not contingent upon its entry in any official register. However, in cases where a notary public is involved in the drafting of a disposition, such notary public provides ex officio for the entry of the fact that a disposition of property has been drafted (or revoked, amended or a will deposited with a notary public has been withdrawn) in the National Register of Wills (Végrendeletek Országos Nyilvántartása). Accordingly, the making of the following types of dispositions of property upon death (or their revocation, amendment or the withdrawal of wills deposited with a notary public) is entered on the National Register of Wills:
- authentic will (will drawn up by a notary public in an authentic instrument);
- private will deposited with a notary public;
- agreement as to succession (if drawn up by a notary public in an authentic instrument);
- testamentary gift (if drawn up by a notary public in an authentic instrument).
However, the omission of such registration for any reason does not compromise the validity of the will.

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

Pursuant to Section 7:10 of the Civil Code, testators are entitled to freely dispose of their property, or a part thereof, by a disposition of property upon death. Accordingly, the freedom of testamentary disposition extends to all the assets of the testator. Even though Hungarian law contains the statutory arrangement of reserved share accruing to certain close relatives (descendant, spouse, parent) of the testator, the reserved share under Hungarian law is a claim *subject to contract law*, which the beneficiary may enforce vis-a-vis the heirs. (The period of limitation for this claim is five years.) The person entitled to a reserved share does not become an heir, that is, he is not entitled to any material (in rem) share in the estate even if he is successful in enforcing his claim against the heir.
By way of a reserved share, the person entitled to a reserved share has a right to a third of the share, which that person would inherit as a legal heir. Where a spouse is also entitled, as a legal heir, to usufruct rights, a reserved share is, in this respect, a limited usufruct right that provides for his or her needs, taking into account the assets he or she has inherited.

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

In the absence of a disposition of property upon death, the rules applicable to intestacy govern succession. Under intestate succession, relatives (descendants, relatives in the ascending or lateral lines) as well as the surviving spouse (or registered partner) of the deceased person inherit, in accordance with the rules outlined below.

a) Inheritance by relatives

aa) Inheritance by descendants (Section 7:55 of the Civil Code)

Legal heirs are, first of all, the children of the deceased person; two or more children inherit in equal shares. In the place of a child (or a more distant descendant) debarred from succession, the descendants of a debarred person succeed in accordance with the rules of substitution, that is,
- in equal shares among themselves;
- in aggregate, the share that their debarred ascendant would have inherited.
However, when determining the share of the estate accruing to the descendants of the deceased person, the so-called *obligation to restore gifts (hotchpot)* of the descendants must also be taken into consideration (see point *e)*).

ab) Inheritance by parents and parents' descendants (Section 7:63 of the Civil Code)

If the deceased person has no descendant and had no spouse (or if they are excluded from succession), the parents of the deceased person succeed in equal shares. In the place of a parent debarred from succession, the descendants of such parent succeed in the same manner in which the descendants of a child succeed in its stead (in accordance with the rules of substitution). If a parent debarred from succession has no descendant, or if the descendant is excluded from succession, the other parent alone or his descendants succeed.

ac) Inheritance by grandparents and grandparents' descendants (Section 7:63 of the Civil Code)

If the deceased person has no descendant, parents or parental descendants and had no spouse (or if they are excluded from succession), the grandparents of the deceased person are the legal heirs in equal shares. In the place of a grandparent debarred from succession, the descendants of such grandparent succeed in the same manner in which the descendants of the parent succeed instead of that parent (in accordance with the rules of substitution).
If a grandparent debarred from succession has no descendant or if the descendant is excluded from succession, the spouse of such grandparent succeeds in his stead, and if he too is debarred, his descendants succeed. If either set of grandparents has been debarred and there are no descendants in their place (or if they are excluded from succession), the entire estate is inherited by the other set of grandparents or their descendants.

ad) Inheritance by great-grandparents and great-grandparents' descendants (Section 7:65 of the Civil Code)

If there are no heirs in the grandparents' kinship group (or they are excluded from succession), the legal heirs of the deceased person are his great-grandparents in equal shares. In the place of a great-grandparent debarred from succession, the descendants of such great-grandparent succeed in the same manner in which the descendants of the grandparent succeed in the stead of that grandparent (in line with the rules of substitution).
If a great-grandparent debarred from succession has no descendant (or if the descendant is excluded from succession), the spouse of such great-grandparent succeeds in his stead, and if he too is debarred, his descendants succeed. If either set of great-grandparents has been debarred and there are no descendants in their place (or if they are excluded from succession), the entire estate is inherited by the other set of great-grandparents in equal shares.

ae) Intestate succession by distant relatives (Section 7:66 of the Civil Code)
If the deceased person has no great-grandparents or descendants of great-grandparents (or if they are excluded from succession), distant relatives of the deceased person become legal heirs in equal shares.
af) Escheat (Section 7:74 of the Civil Code)
In the absence of legal heirs the estate reverts to the State.
The State is an heir of necessity, which means that it is not entitled to waive an inheritance. In other respects, however, the State has the same legal status as other heirs. In Hungarian law, the inheritance of the State is an acquisition subject to civil law rather than public law.
b) Inheritance by the spouse (Sections 7:58 and 7:62 of the Civil Code)
The intestate succession of the surviving spouse is contingent upon the existence of a *legally valid* wedlock with the deceased person. Nevertheless, the mere existence of wedlock is not sufficient for the intestate succession of the spouse. Section 7:62 of the Civil Code specifies a special cause for debarment in the event of the absence of *conjugal community*: the surviving spouse may not inherit if the couple were separated at the time of the opening of the succession and it is manifestly evident from the circumstances that there was no reasonable expectation of reconciliation. This reason for debarment may be invoked by a person who, as the result of such debarment, would himself inherit or would be exempted from an obligation or other burden to which he is bound by virtue of the disposition of property.
It should be noted that the rules governing the succession of spouses in the Civil Code must also be applied, with the necessary modifications, to *the registered partner* of the deceased person; consequently, registered partners have the same inheritance status as spouses, taking into account Section 3(1) of the Act regulating registered partnership (Act XXIX of 2009).
In contrast to registered spouses, so-called de facto domestic partners (persons who lived in actual conjugal community with the testator out of wedlock or registered partnership) are not entitled to intestate succession under Hungarian law.
The status of spouses in intestate succession depends on the presence of any other legal heirs of the deceased:
ba) Inheritance by spouses and descendants (Section 7:58 of the Civil Code)
If the deceased person has descendants and a surviving spouse, the surviving spouse has the following rights in succession:
- life estate on the family dwelling used together with the deceased person, including furnishings and appliances; and
- from the remainder of the estate a share of the same size as inherited by the children of the deceased (one ‘share of a child’)
The spouse may at any time request the redemption of his life estate (in respect of the future) (Section 7:59 of the Civil Code). In this case, the spouse is entitled to one ‘share of a child’ – in kind or in money – from the estate to be redeemed. The life estate may be redeemed in the course of the probate proceedings as well. The redemption of the life estate must be carried out in due consideration of the interested parties’ (the spouse’s and the descendant’s) reasonable interests.
In the course of the probate proceedings, the descendants and the spouse may stipulate in their agreement for the allocation of the estate (in the so-called allocation agreement) that instead of the ‘share of a child’, the spouse receives a life estate for the entire estate.
bb) Inheritance by spouses and parents (Section 7:60 of the Civil Code)
If the deceased person has no descendant (or the descendant is excluded from succession) and the deceased person has surviving parents as well as a surviving spouse, the surviving spouse has the following rights in succession:
- the family dwelling used together with the deceased person, including furnishings and appliances (the ownership title to such property rather than an estate for life); and
- half of the remaining part of the estate. The other half of the estate is distributed as follows:
- This part of the estate is divided between the two parents of the deceased person in equal shares;
- If, however, one of the parents is debarred from succession, the other parent and the deceased person’s spouse inherit in equal shares the portion that would be allocated to the debarred parent.
bc) Spouse as the sole heir (Section 7:61 of the Civil Code)
If the deceased person has no descendant or surviving parent (or they are excluded from succession), the surviving spouse inherits the entire state.
Consequently, the intestate succession of the surviving spouse precludes intestate succession by the descendants of the deceased person’s parents (or siblings of the deceased person) or by distant relatives in the ascending or lateral lines.
c) Legal effects of adoption in respect of intestate succession
Adoption gives rise to rights in intestate succession between the adopted person and the adoptive parent and his relatives. In addition, in certain cases intestate succession rights also remain between the adoptee and his blood relatives.
ca) Intestate succession by the adoptee
Adopted persons, during the existence of adoption, are treated as blood descendants of the adoptive parent for the purposes of intestate succession: they inherit as a blood descendant of the adoptive parent from the estate of the adoptive parent and his relatives. The adoptee also retains his legal right to inherit from his blood relatives, but only if the adoptee was adopted by a relative in the ascending line, a sibling, or a descendant of such relative in the ascending line. (Section 7:72 of the Civil Code)
cb) Intestate succession of the adoptee’s property
The effect of adoption as regards inheritance also applies ‘conversely’. The following persons are entitled to be legal heirs of an adopted person:
- his descendants and surviving spouse;
- in the absence of descendants, his spouse and adoptive parents;
- in the absence of descendants and a surviving spouse, adoptive parents and their relatives,
in accordance with the general rules of intestate succession.
The intestate succession of an adoptive parent and his relatives is conditional on the adoption existing at the time of the opening of the succession.
If, however, the persons listed above do not inherit after the adoptee, the adoptee’s blood relatives are legal heirs, provided that the adoptee was adopted by a relative in the ascending line, a sibling, or a descendant of such relative in the ascending line (Section 7:73 of the Civil Code).
d) 'Lineal succession' – special rules for intestate succession regarding particular assets
So-called ‘lineal succession’ is a special feature of Hungarian law. Lineal succession means *particular* intestate succession rules whereby certain assets in the estate (the so-called lineal property) are subject to treatment different from the general rules in respect of intestate succession.
It should be noted that the rules of lineal succession are applicable exclusively *if there are no descendants.* If the deceased person has descendants as legal heirs, the general rules of intestate succession apply.
da) Assets belonging to the lineal property (Section 7:67 of the Civil Code)
Lineal property constitutes a sub-estate within the estate of the deceased person. This sub-estate comprises those assets
- which the deceased person acquired from an ancestor by inheritance or gift; and

- which the deceased person inherited or received as a gift from a sibling or a descendant of a sibling, provided that the sibling or the descendant of the sibling acquired the property in question from his and the deceased person's common ancestor, by way of inheritance or gift.
However, the law removes certain assets from the scope of lineal property (so-called 'property excluded from lineal succession'); see point *dd)* below.
The lineal nature of the property (that is, that the property in question belongs to the lineal property) must be proven by the person who would inherit under this title.
db) Inheritance of lineal property (Section 7:68 of the Civil Code)
Lineal property is inherited by the parents of the deceased (or the descendants of debarred parents) and the grandparents and distant ancestors of the deceased ('lineal heirs'). The inheritance of lineal property is governed by the following rules:
- A parent inherits property that has come down to the deceased from him or one of his ancestors. If the parent has been debarred, his descendants inherit in his place according to the general provisions on intestate succession.
- If both the parent and the parent's descendant entitled to inherit the lineal property have been debarred, lineal property is inherited by the grandparent of the deceased person;
- If the grandparent of the deceased person has also been debarred, the lineal property is inherited by a more distant ascendant of the deceased person.
If the deceased person has none of the heirs listed above, the rules of lineal succession are not applied: in this case, the inheritance of lineal property is governed by the general rules of intestate succession.
dc) The surviving spouse's life estate on lineal property (Section 7:69 of the Civil Code)
The heirs specified in point *db)* (lineal heirs) inherit the ownership title to lineal property. However, the surviving spouse of the deceased person is entitled to life estate on lineal property.
The redemption of the right to life estate can be requested as follows:
- Any of the interested parties – that is, either the spouse entitled to life estate or the lineal heir – may request the redemption of the life estate;
- However, redemption relating to life estate on the family dwelling used together with the deceased person, including furnishings and appliances, may be requested exclusively by the spouse.
In the event of the redemption of life estate, the spouse is entitled to one-third of the lineal property.
dd) Property excluded from lineal succession (Section 7:70 of the Civil Code)
Notwithstanding the provisions of *da)*, the following items are excluded from lineal property:
- gifts of ordinary value;
- any property that no longer exists at the time of the testator's death. However, the provisions on lineal succession apply to any substitute property or any property purchased from the proceeds received for such property.
If a deceased person has a surviving spouse, no claim may be made, on the grounds of lineal succession, for furnishings and household accessories of ordinary value.
e) Obligation to restore gifts (hotchpot)
If the heirs are descendants of the deceased person, the share allocated to each heir from the estate is influenced by the obligation of the descendants to restore gifts vis-a-vis one another. Essentially, if several descendants succeed together, each heir adds to the value of the estate the value of *advancements* they received from the deceased during his lifetime (Section 7:56 of the Civil Code).
The obligation to restore gifts is governed by the following main rules.
Based on the obligation to restore gifts, the co-heir must add advancements to the estate as long as
- the deceased person expressly stipulated such advancements to be included in the heir's share of the estate, or
- the circumstances suggest that the bequest was made under the obligation of inclusion.
Nevertheless, the obligation to restore gifts does not extend to the following bequests (Section 7:56(3) of the Civil Code):
- advancements of ordinary value; and
- maintenance provided to descendants who are in need of support
even if the deceased person expressly stipulated it.
The procedure of the restoration of gifts comprises the following actions (Section 7:57(1) of the Civil Code):
- heirs must add to the value of the estate the value of the advancements received from the deceased;
- the resulting consolidated value (that is, the consolidated value determined by adding the value of the estate to the net value of the restored advancements) must be divided proportionately among the heirs as appropriate for their share under intestate succession;
- the value of advancements restored by each heir (that is, the value of the advancement received by him from the deceased person) must be deducted from the share allocated to that heir.
If the value restored by a co-heir reaches or exceeds the value of his share of the estate as calculated on the basis of restored values, he is considered satisfied from the inheritance to be divided, but is not required to refund any excess (Section 7:57(4) of the Civil Code).
Descendants have an obligation to restore gifts
- in the event of intestate succession; or
if the descendants inherit shares corresponding to their legal share of the estate by virtue of a will (Section 7:56(2) of the Civil Code).

5 What type of authority is competent:

5.1 in matters of succession?

In Hungary, proceedings subject to the law of inheritance are within the competence of notaries public or the courts.
- If there is no dispute between the parties having an interest in succession, the legal matters related to the estate are generally settled in probate proceedings conducted by a notary public (for details, see point 6). The probate proceeding conducted by a notary public is a non-contentious proceeding, where the notary public has a function similar to that of a court, and his proceeding ends with a formal decision ('grant of probate').
- If, however, there is a legal dispute between the interested parties, this may not be settled by the notary public; in such cases, court proceedings follow.
As legal disputes in succession matters are relatively infrequent, the overwhelming majority of succession cases in Hungary is definitively settled in the probate proceedings conducted by a notary public.

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

Hungarian law follows the principle of *ipso iure* succession; the estate is transferred to the heir at the time of death of the testator without any separate legal act. Consequently, under Hungarian law it is not necessary to make a statement about the *acceptance* of inheritance.
If an heir does not wish to inherit, he may make a statement to *waive* succession. The law provides no specific requirements as to the form of the waiver; it is valid as regards form whether made orally or in writing.

Nevertheless, in Hungary the order of succession is determined in a formal legal procedure, the so-called probate proceeding (see point 6), thus the notary public conducting the probate proceeding must be informed about the waiver if it is to be taken into account during the probate proceeding. Therefore, in practice either the waiver is made in front of the notary public conducting the probate proceeding or a written waiver is submitted to such notary public.
If an heir waives succession, this takes effect retroactively on the date of the testator's death: the estate is considered as not having devolved.

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

The rules explained in point 5.2 concerning the transfer and waiver of succession govern, with the necessary modifications, specific legacies (legatum vindicationis).

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

As noted above, in Hungarian law reserved shares are claims subject to the law of contract, which can be enforced against an heir. It does not represent a material (in rem) share in the estate. Accordingly, no 'declaration of waiver or acceptance of a reserved share' is known under Hungarian law. The mode of settlement of a claim for a reserved share depends primarily on the relationship between the heir and the person entitled to a reserved share:
- If there is *consensus* between the heir and the person entitled to the reserved share in this respect (that is, the heir recognises the claim for a reserved share), they may make an agreement in the probate proceedings as to the satisfaction of the claim for a reserved share (e.g., the heir may transfer some property included in the estate to the person entitled to a reserved share by way of satisfying his claim);
Otherwise the person entitled to a reserved share may enforce his claim against the heir in court.

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)

Hungarian law provides for a formal legal procedure of the so-called probate proceedings. This proceeding is started *ex officio* (at the official's own initiative) and serves the purpose of involving all interested parties (heirs, legatees, persons entitled to reserved shares, estate creditors, etc.) to settle all legal issues relating to succession in a single procedure as far as possible.
In Hungary probate proceedings consist of two stages. The first stage is the *inventory proceeding* conducted by a designated employee of the competent local mayor's office, the inventory official. This procedure effectively serves to lay the ground for the proceeding of the notary public; its aim is to clarify the personal and material circumstances of the succession case (in particular the property included in the estate as well as the range of interested persons and to establish whether the deceased person has left a disposition of property upon death). All these facts are recorded in the inventory of the estate, which is sent to the competent notary public when completed.
The second stage is the *proceeding before the notary public*, which is conducted in accordance with the rules on non-contentious court proceedings. In this procedure, the notary public plays a function similar to that of courts and exercises the public authority of the state.
This procedure is subject to specific *rules of jurisdiction*: only the notary public with competence as defined in law may proceed; in other words, in probate proceedings the interested parties (e.g. the heirs) may not involve the notary public of their choice.
In the course of the proceedings, the notary public examines ex officio the facts and circumstances that determine the order of succession. A hearing is generally necessary to clarify the facts; the notary public summons the interested parties to attend that hearing. If there is evidence indicating that the deceased person has left a disposition of property upon death, the notary public takes steps ex officio to acquire that deed.
In Hungary, the *distribution of the estate* among heirs generally occurs in the framework of the probate proceedings. The distribution of the estate is essentially the termination of the co-ownership of heirs that resulted through succession. This tends to occur through an agreement among the interested heirs: the *allocation agreement*. If heirs conclude such an allocation agreement, the notary public issues the grant of probate based on the agreement, with corresponding content.
In the course of the probate proceedings an agreement may be made between heirs and other interested parties as well: heirs may transfer, in part or in whole, the property acquired by succession to an estate creditor or a person entitled to a reserved share by way of satisfying their claims. This allows for the negotiated settlement of the claims of estate creditors or of persons entitled to a reserved share in the course of the probate proceedings.
At the conclusion of the probate proceedings the notary public issues a formal decision: a *grant of probate*. In this decision the notary public legally transfers the various elements of the estate to the heirs (or legatees).
The interested parties may *appeal* the grant of probate issued by the notary public; the appeal is adjudicated by the competent regional court. In the absence of an appeal, the grant of probate becomes final. The final grant of probate is an authentic public document that certifies the status of the heir (legatee) named in it. The notary public provides ex officio for the forwarding of the final grant of probate to the authority maintaining the real estate register (or register of other items of property).
It should be noted that if there is a legal dispute between the interested parties, the notary public may not resolve it in the probate proceedings; legal disputes may only be settled in court proceedings.

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

Pursuant to Section 7:1 of the Civil Code, the estate of a person devolves upon an heir in its entirety after the testator's death. Accordingly, Hungarian law follows the principle of *ipso iure* succession. An heir acquires the estate by virtue of the law, without any separate legal act (e.g., declaration of acceptance) at the time of the testator's death; 'vacant estate' (hereditas iacens) does not exist in Hungarian law. In the case of more than one heir, they acquire the estate in proportion to their shares in the estate upon the death of the testator; consequently, at the time of death an undivided co-ownership of property is created among them.
There are two kinds of legacy under Hungarian civil law: specific legacy (legatum vindicationis) and obligatory legacy (legatum damnationis).
Specific legacy is the donation by the testator of a particular item of property in the estate to a specified beneficiary (the specific legatee) in a disposition of property upon death. Specific legacy is direct acquisition of a right in the estate; that is, the legatee also acquires the object of the specific legacy at the time of the testator's death.
Obligatory legacy is a legacy whereby the testator obliges his heir, in a disposition of property upon death, to provide some financial benefit to a specified beneficiary (for instance, pay a certain sum of money). In terms of its legal nature, obligatory legacy is an obligatory legal claim against the heir, and it does not entail the direct acquisition of rights from the testator.
In light of the above, under Hungarian law heirs and specific legatees acquire the estate or legacy at the time of the testator's death. It should be noted, however, that despite direct, ipso iure acquisition of rights, under Hungarian law it is generally necessary to conduct a formal legal procedure (probate proceedings) to provide authentic certification of succession.

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

Yes. Pursuant to Section 7:96 of the Civil Code, heirs are responsible for estate debts. This liability of heirs is limited, as follows:
- Heirs are liable for estate debts primarily with the estate property ('with the objects and proceeds of the estate') (*cum viribus* liability).
- If, however, the objects or proceeds of an estate are not in the heir's possession at the time the claims are enforced, the heir's other property shall also be appropriated up to the value of their inheritance to cover the claims (*pro viribus* liability).

It should be noted that, unlike other legal systems, Hungarian law recognises no correlation between the liability of heirs and the inventory of the estate. The limited nature of the liability of heirs arises from the law: heirs need not make a 'declaration limiting their liability' when accepting a succession.
Section 7:94 of the Civil Code specifies the claims that constitute estate debt. Accordingly, estate debts comprise:
a) costs of a proper burial for the deceased;
b) applicable costs of acquiring, securing, and managing an estate ('estate costs'), as well as the costs of probate proceedings;
c) the debts of the deceased;
d) obligations based on the reserved share;
e) liabilities based on legacies and devises.
The above five categories of estate debts are ranked in a hierarchical *order* (Section 7:95 of the Civil Code). Debts are satisfied in the sequence established for the different categories of estate debts. If full satisfaction of all the debts in a debt category is not possible, claims are satisfied proportionately within the category (in proportion to the relative size of claims).

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

If the estate contains real property, the notary public provides ex officio for the forwarding of the final grant of probate to the competent authority maintaining the real estate register (see point 6) so that changes relating to the property can be entered in the register.
Pursuant to Section 29 of Act CXLI of 1997 on Real Estate Registration (1997. évi CXLI. törvény az ingatlan-nyilvántartásról; 'Real Estate Registration Act'), as a general rule, rights may be registered and facts may be recorded on the basis of public documents, private documents of full probative force, or copies of such witnessed by a notary public, which substantiate the creation, modification or termination of the right or fact which is the subject matter of registration, with a statement of authorization for registration from the right-holder of record or potential right-holder to be registered in the real estate register as an interim beneficiary (i.e. an authorization for registration, which may be granted by the right-holder by way of issuing a document of the same formal requirements as the document on the basis of which the registration is effected).
Section 32 of the Real Estate Registration Act specifies the required content of a document for the purposes of real estate registration:
a) the natural identification data, address and personal identification number of the client,
b) the name, statistical number, registered office and the court or company registration number of organisations having statistical numbers; for ecclesiastic legal persons, the registration number,
c) full address and description of the property in question (municipality, topographical lot number) as well as the ownership share affected,
d) detailed description of the right or fact,
e) the legal grounds of the change,
f) agreement of the parties concerned and/or an unconditional and irrevocable statement of authorization by the registered owner,
g) contracting parties' statement concerning their respective citizenship.

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?

Hungarian law does not recognise the legal concept of administrator of an estate (trustee).
Nevertheless, in certain cases the proceeding notary public may appoint an administrator to perform certain functions of administration of property in the estate. This may occur in the following cases:
aa) administrator for the exercise of membership rights in business associations (Section 32(2) of the Succession Act)
If the estate includes a participation/share in a business association (or cooperative), the notary public may appoint an administrator for the temporary exercise of rights arising from the participation/share. Such administrator is appointed at the request of the association (cooperative) or of any person (entity) having an interest in its operation.
ab) administrator for collections (Section 32(3) of the Succession Act)
If the estate includes claims, the notary public may appoint an administrator to collect such claims, at the request of a party having an interest in succession. Such administrator is responsible for taking the legal measures necessary to enforce claims that are part of the estate.
No administrator is appointed (even in the above cases) if the aforementioned acts are performed by an *executor of the will*.

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

In Hungary, legal issues relating to succession are settled in a formal legal procedure (probate proceedings) conducted by a notary public, who performs the functions of a judge in the proceedings (see point 6).
The notary public ascertains ex officio whether there is any entry in the National Register of Wills regarding the disposition of property upon death of the deceased person and provides ex officio for the acquisition of the disposition of property upon the testator's death if there is information indicating that a disposition of property exists.
Accordingly, under Hungarian law it is the *task and responsibility of the notary public conducting the probate proceedings to enforce a disposition of property upon death*.
Nevertheless, Hungarian law also allows testators to appoint an executor of their disposition of property (will). It should be emphasised, however, that the appointment of an executor of the will does not substitute for probate proceedings; an executor of the will may not 'assume' the responsibilities of a notary public.
The rights and obligations of an executor of the will are governed by the provisions of the disposition of property upon death. If the disposition contains no provisions in this regard, the executor of the will has the following rights and obligations (Section 99 of the Succession Act):
- assist the proceeding authorities in taking an inventory of the estate;
- initiate security measures to safeguard the estate where required;
- manage the estate. In this asset management role, the executor of the will has the right and obligation to
- demand that heirs or legatees implement the provisions of the will;
- satisfy estate creditors (acting on his own behalf, but to the debit of the estate);
- temporarily exercise membership rights arising from any shares (participations) in business association (cooperatives) included in the estate;
- enforce claims that are part of the estate (acting on his own behalf, but to the credit of the estate).

However, the asset management rights of the executor of the will are limited: he may not assume any obligations in respect of the estate property and may not sell property, except where every person having an interest in succession has consented to such acts; furthermore, he may not make a disposition to the debit of the estate free of charge.

9.3 What powers does an administrator have?

For the rights and obligations of the administrator appointed by the notary public and of the executor of the will, see point 9.1.

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?

As indicated above (see point 6), in Hungary probate proceedings are conducted by a notary public. At the end of this procedure a formal decision, the *grant of probate* is issued. In this decision the notary public legally transfers the elements of the estate to the individual heirs.

It should be noted, however, that the acquisition of ownership by heirs does not occur by virtue of the grant of probate. Hungarian law, as noted above, follows the principle of *ipso iure succession*; the estate devolves to the heirs at the time of the testator's death. In this respect the grant of probate is *declaratory* in effect.

Once it has become final, the grant of probate issued by the notary public has a *legitimising function*: it is an authentic document which certifies to third parties the status of the persons named therein as heirs (or legatees) unless a court decides otherwise in a legal procedure.

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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.

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Succession - Netherlands

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?

A will can be drawn up only by notarial deed (notarial will) (*notariële akte (notarieel testament)*) or by handwritten private deed handed to a notary for safekeeping in a deposited will (*depot-testament*) (Article 4:94 of the Civil Code (*Burgerlijk Wetboek*). A limited number of exceptions are made in special cases (Article 4:97-107 of the Civil Code). A joint will (*gezamenlijk testament*) is not accepted (Article 4:93 of the Civil Code). An agreement concerning a future inheritance is also not accepted. According to Article 4:4(2) of the Civil Code, agreements intending to dispose, in whole or in part, of a not yet devolved estate are null and void.

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

The notary who draws up the will must register the information on the following working day in the Central Register of Wills (Centraal Testamenten Register (CTR)).
See also: http://www.centraaltestamentenregister.nl/. Information on safekeeping, registration and searching for a will is also available on the website of the European Network of Registers of Wills Association (ENRWA) in the 'Information sheet' section: http://www.arert.eu/

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

The descendants of the deceased (children or – if the children have already died – their children) cannot be completely disinherited. They are entitled to a reserved share (*legitieme portie*). Neither the spouse nor the ascendants are entitled to a reserved share. The reserved share amounts to half of the estate, see Article 4:64 of the Civil Code. If a descendant invokes their reserved share, they will no longer be considered as an heir (*erfgenaam*) but as a creditor (*schuldeiser*) of the estate.

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

In the absence of a will, the following principles are applicable to the various scenarios:
If the deceased was unmarried and had no children, in principle the parents, brothers and sisters inherit in equal shares, with each parent always inheriting at least a quarter-share.
If the deceased was unmarried and there are surviving children, the estate is divided equally among the children.
If the deceased is survived by a spouse and there are no surviving children, the last surviving spouse inherits the entire estate.
If the deceased is survived by a spouse and children, the children and the spouse inherit in equal shares, but the surviving spouse by law acquires the assets of the estate. Winding up the estate is the responsibility of the spouse. Each of the children will, in their capacity as heirs, be legally entitled to a monetary claim (*geldvordering*) on the surviving spouse. The monetary claim corresponds to the child's share in the estate. This claim becomes enforceable if the surviving spouse is declared bankrupt or is placed under debt restructuring (see also the Natural Persons Debt Restructuring Act (*Wet schuldsanering natuurlijke personen*)) or if they die (Article 4:13 of the Civil Code). In some situations, children can also enforce their monetary claim earlier, for example if the surviving spouse remarries.
Married spouses and registered partners are treated equally.

5 What type of authority is competent:

5.1 in matters of succession?

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

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

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

The notary is the competent authority in the Netherlands with respect to inheritance law. The parties are free to choose a notary regardless of the deceased's last place of residence.
The heir has three options:
accept the succession unconditionally;
accept the succession under benefit of inventory, limiting liability for debts to the value of what is inherited (*beneficiair aanvaarden*);
waive the succession.
If the heir wishes to accept the inheritance outright (unconditional acceptance), they may do so implicitly and without specific formalities by performing certain actions, such as selling or otherwise appropriating the deceased's assets. The consequence of unconditionally accepting the succession is that the heir is personally liable for the debts of the estate with their own assets. The heir can limit this liability by expressly accepting the succession on condition that the debts of the inheritance do not exceed its value. The heir does so by making a declaration of acceptance under benefit of inventory (*verklaring van beneficiaire aanvaarding*) to the court registry (*griffie van de rechtbank*). The heir must also do this if they do not wish to receive the succession and wish to waive it. These declarations are not subject to any time limit, but a creditor or other interested party may request that the court impose a time limit on the heir. If the heir allows this time limit to expire, the inheritance is unconditionally accepted. This is also the case if the heir behaved as though they had unconditionally accepted the succession, prior to making a declaration. A choice once made cannot be reversed.
Legacies (*legaten*) can be accepted or refused without specific formalities. Under Dutch law, limited acceptance is not possible for legacies.
A forced heir (*legitimaris*) can waive their right to the reserved share simply by not claiming it. The law does not stipulate any specific declarations for this purpose. If forced heirs waive their reserved share, it is possible to record this in a declaration.

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)

In most cases, especially if there is a marriage contract (*huwelijkscontract*) or a will, it is advisable to engage a notary to wind up the estate. Each of the heirs or an executor (*executeur-testamentair*), if one is designated in the will, can engage a notary in the Netherlands. The parties are free to choose a notary regardless of the deceased's last place of residence. The notary will assist the heirs to settle the estate. They will establish/determine who the heirs are, before checking whether a will has been drawn up and informing and advising the beneficiaries on the consequences of accepting or refusing the inheritance. The notary may also assist them in complying with their tax obligations. Only in a few situations does the court play a role in winding up successions. This may occur if winding up the estate is disputed or if one of the heirs (for example because they are a minor) is unable to look after their own interests.

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

In the Netherlands, no provision is made for any court procedure. If there is no will, the law determines who the heirs are. If there is a will, it indicates who the heirs and legatees (*legatarissen*) are. The notary may indicate who the heirs to the estate are in a certificate of succession (*verklaring van erfrecht*), see Article 4:188 of the Civil Code. The executor of the will can also ask for a certificate of succession. In the certificate of succession, the notary has the authority to identify the persons who are entitled to the inheritance, their share in the inheritance and, if applicable, the name of the executor. By means of the certificate of succession, the heirs/executor can identify themselves to the debtors of the estate and they will be able to obtain disposal of the bank balances, etc. A notarial deed is necessary for the transfer of immovable property or a right in an immovable property to one of the heirs.

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

If the heir has unconditionally accepted the inheritance, they are fully liable for the debts of the deceased (Article 4:182 of the Civil Code). If the inheritance is accepted under benefit of inventory, the heir is liable for the debts only in so far as these are covered by the gains from the estate. They are not personally liable.

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

The certificate of succession can be recorded in the public register of immovable property (*openbaar register van onroerend goed*). For the transfer of title to immovable property or rights in immovable property, a separate notarial deed is necessary.

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?

Dutch law does not provide for the mandatory appointment of an administrator of the estate (*beheerder van de nalatenschap*).

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

Testators (*erflaters*) can designate an executor in their will, who can wind up the estate. In the case of acceptance under benefit of inventory, a special administrator (*speciale beheerder*) may be appointed by the court.

9.3 What powers does an administrator have?

The executor named in the will normally has limited powers in accordance with Article 4:144 of the Civil Code. They can administer the estate and settle the debts of the estate. Testators can give the executor more rights, for example the transfer of assets in the estate without permission from the heirs. If the executor is appointed as a special executor (*speciale executeur*) (the trustee winding up the estate (*afwikkelingsbewindvoerder*)), they can transfer assets and take all decisions concerning the division of the estate.

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?

A deed of division (*akte van verdeling*) can be concluded by the heirs. The document becomes a notarial deed if it is drawn up by the notary. This is required where an heir has legal incapacity (on account of being a minor or on account of receivership /judicial administration (*curatele*/*bewindvoering*). A notarial deed is necessary for the transfer of immovable property or rights in immovable property in the Netherlands, see reply to question 7 above. In all other cases, a deed of division of the estate is not required. The certificate of succession is sufficient for the transfer of assets, such as bank accounts and other movable property.

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Succession - Austria

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?

Specific formal requirements must be observed when making a will. The types of will that are recognised under Austrian law include:
a public will drawn up by a notary or court;
a holographic will, which the testator must write entirely by hand and sign; and
a written will (handwritten or typed by someone other than the testator), which must be drawn up in the presence of three witnesses.
A contract of inheritance (Sections 1249 et seq. of the Civil Code (*Allgemeines bürgerliches Gesetzbuch* – ABGB)) can only be concluded by spouses, engaged partners who actually go on to marry and (future) registered partners, and must take the form of a notarial deed (in accordance with Section 1, first paragraph, point (a) of the Notarial Deeds Act (*Notariatsaktsgesetz*)); the presence of two witnesses or a second notary is required. A contract of inheritance, which must meet the validity requirements for testamentary dispositions, may not dispose of more than three quarters of the estate. In this context, registered partners have the same rights as spouses and partners engaged to be married (Section 1217 ABGB).
A joint will may only be made by spouses or registered partners (Section 586 ABGB).
Donationes mortis causa (gifts of personal property made by someone who expects to die in the immediate future, taking full effect only after the donor dies) are regulated by Section 603 ABGB and are given through a contract, which must take the form of a notarial deed.

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

Wills, contracts of inheritance and any contracts waiving the right to the inheritance or to the reserved share can be registered in the Austrian Central Register of Wills (*Österreichisches Zentrales Testamentsregister*) (Section 140b of the Notarial Code (*Notariatsordnung*)), provided that they have been deposited with a notary, court or lawyer. This electronic register is managed by the Austrian Chamber of Civil Law Notaries (*Österreichische Notariatskammer*) and is the only register of wills that is regulated by law. Courts and notaries are required to report the existence of any such documents to the register (Section 140c(2) of the Notarial Code). The purpose of registration is to make these documents easier to find during probate proceedings. Lawyers and law firms may register wills and other testamentary dispositions in the Register of Wills of Austrian Lawyers (*Testamentsregister der österreichischen Rechtsanwälte*). During probate proceedings, the court commissioner must search the Austrian Central Register of Wills and the Register of Wills of Austrian Lawyers and document the result of their search (Section 145a of the Non-contentious Proceedings Act (*Außerstreitgesetz* – AußStrG)).

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

The reserved share (which restricts the degree of testamentary freedom) amounts to half the intestate share in the estate of the deceased. The deceased's issue and surviving spouse or registered partner are entitled to a reserved share. If a person entitled to the reserved share never had a close family relationship with the deceased or such a relationship has not existed for a long period of time (about 20 years), the reserved share may be reduced.
The reserved share is the share in the value of the assets of the deceased that is to be distributed to the persons entitled to the reserved share. The reserved share must be paid in cash. However, it may also be covered by a gift on the death of the deceased (Section 780 ABGB) or a lifetime gift (Section 781 ABGB).
The right to a reserved share must be asserted in court within 3 years of discovery of the claim and at the latest within 30 years (Section 1487 ABGB). The period of limitation begins with the discovery of the facts which determine the existence of the claim, but no sooner than 1 year after the death of the deceased (Sections 765 and 1487a ABGB).
The reserved share may be waived while the testator is still living. This waiver must take the form of a notarial deed or an official court record (Section 551 ABGB).

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

If the deceased is not survived by a spouse, a registered partner, or any children, then the parents of the deceased and their issue (i.e. the siblings of the deceased) inherit (Sections 735 and 736 ABGB).
If the deceased is not survived by a spouse or a registered partner but is survived by children, then the children inherit equal shares (Section 732 ABGB).
If the deceased is survived by a spouse or a registered partner but no children, then the surviving spouse or registered partner becomes the sole heir.
If the deceased is survived by a spouse or a registered partner and children, then the spouse or registered partner inherits one third of the estate plus a preference legacy granted by law (that entitles them to the household items). Two thirds of the estate are divided equally among the children of the deceased (Section 744 ABGB).
The non-registered partner (cohabiting partner) inherits if there are no other statutory heirs. Otherwise, they inherit only if there is a testamentary disposition to that effect. However, the surviving cohabiting partner is protected by the Tenancy Act (*Mietrechtsgesetz*) and the Apartment Co-ownership Act (*Wohnungseigentumsgesetz*). If the deceased and their cohabiting partner jointly owned an apartment (cooperative apartment ownership), the deceased's share goes to the surviving partner. In addition, the cohabiting partner has a preference legacy granted by law and therefore the right, limited to 1 year, to continue to live in the shared home and to use the joint household items, in so far as they are necessary in order to continue living in accordance with the previous living conditions.

5 What type of authority is competent:

5.1 in matters of succession?

The district court (*Bezirksgericht*); the court commissioner (notary) as an organ of the court.
The authority with jurisdiction in the subject matter and geographical area is the district court where the deceased's last place of legal residence was located (last abode, usual place of residence) (Section 105 of the Court Jurisdiction Act (*Jurisdiktionsnorm* – JN) in conjunction with Sections 65 and 66 JN). For the purposes of carrying out the process, the district court relies on the services of a notary acting in the capacity of a court commissioner (Section 1 of the Court Commissioner Act (*Gerichtskommissärsgesetz* – GKG)).

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

The district court; the court commissioner (notary) as an organ of the court.

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

The district court; the court commissioner (notary) as an organ of the court.

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

The district court; the court commissioner (notary) as an organ of the court.

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 inheritance process (or 'probate proceedings' (*Verlassenschaftsverfahren*)) is initiated by the district court once the accrual of inheritance has been officially announced. The competent district court is that of the district where the deceased had their last abode or usual place of residence. The proceedings are handled by a notary in their capacity as a court commissioner, and end with a court order.
Probate proceedings must be initiated by the court's own motion as soon as the court becomes aware of a death (Section 143(1) AußStrG)).
The court commissioner identifies the heirs as part of the judicial probate proceedings (Section 797 ABGB).
The court commissioner (Section 1(2), subparagraph 2(b), and Section 2(2) GKG) draws up an inventory of the estate in the following circumstances: if a declaration of conditional acceptance of the inheritance has been submitted (which limits the liability of an heir to the value of the assets they will receive from the estate); if the persons who may be entitled to a reserved share are minors or may require a legal representative on other grounds; if authorisation has been granted for the inheritance to be segregated from the assets of the heir; if inheritance by a subsequent heir has to be taken into account or if a private testamentary trust has been established; if there is a possibility of the inheritance going to the State for lack of an heir; or if this is requested by any authorised person or by the trustee of the estate (Section 165 AußStrG).

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

No-one is allowed to take possession of the inheritance on their own authority. Rather, it must be officially handed over so that it is legally possessed by the heir, a process known as the devolution of property (*Einantwortung*) by order of the probate court (*Abhandlungsgericht*) (Section 797 ABGB and Section 177 AußStrG). Property can only be devolved once a declaration of acceptance of the inheritance has been submitted by the persons concerned as evidence of their right to inherit, and once the judicial probate proceedings are complete. Even in the case of real estate, ownership is transferred at the time of devolution, i.e. independently of entry of the new owner in the land registry. However, if the heirs fail to submit an application for entry in the land registry within a reasonable amount of time, the court commissioner is required to submit the application instead.

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

The heirs are liable for the deceased's debts from their total assets. However, if an inventory has been drawn up, they are only liable up to the value of the estate.

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

The document showing legal title of acquisition must be presented to the land registry court (*Grundbuchsgericht*). Heirs are required to present the devolution order and legatees must present an official confirmation. In addition, it may be necessary to present a tax clearance certificate and, depending on the law of the province concerned, a special permit issued under the legislation governing real estate transactions as well as – where applicable – proof of the transferee's citizenship.

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?

It is not mandatory to appoint an administrator.

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

An heir who is sufficiently able to prove their right to inherit on acceptance of the inheritance is entitled to use and administer the inherited assets and to represent the inheritance, unless otherwise stipulated by the probate court (*Verlassenschaftsgericht*); where this applies to more than one party, all parties exercise this right jointly, unless they agree otherwise (Section 810(1) ABGB).

9.3 What powers does an administrator have?

The executor only plays a secondary role during Austrian probate proceedings. This is because the probate proceedings are handled by the court and it is the court commissioner, as an organ of the court, who ensures that the wishes of the deceased are implemented. According to Section 816 ABGB, the deceased can use a testamentary disposition to designate someone with responsibility for carrying out their final wishes. The scope of this person's duties is defined by the testamentary disposition and may range from monitoring whether the heir/legatee fulfils certain conditions or distributes the estate correctly through to the administration of the estate.

If oral proceedings are arranged as part of the process of summoning the creditors of the estate (Sections 813 to 815 ABGB), the court commissioner is required to announce the date of these proceedings and also to summon the executor (Section 174 AußStrG).

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?

On request, the court commissioner must issue an official confirmation to the beneficiaries as proof of their power of representation (Section 172 AußStrG) (see point 9.2 above).

Once the heirs and their shares have been definitively determined and evidence has been provided to show that the other requirements have been met, the court must devolve the inheritance to the heirs (Section 177 AußStrG: devolution order). An official copy of the devolution order bearing a certificate of indefeasibility is sufficient to unblock funds held at credit institutions (Section 179 AußStrG).

The European Certificate of Succession provided for in Articles 62 et seq. of the European Succession Regulation (Regulation (EU) No 650/2012) is issued by the court commissioner. If the applicant does not agree with this Certificate of Succession, the court must examine it. The Certificate issued by the court commissioner ceases to be valid and is replaced by the Certificate issued by the court.

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Succession - Poland

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?

Under Polish law, property can be disposed of after death only by way of a will. Joint wills are prohibited. The following forms of will are accepted:

a holographic will entirely handwritten, signed and dated by the testator;

a notarial will drawn up by a notary in the form of a notarial deed;

a will made orally in the presence of two witnesses before the mayor of a municipality ('*wójt*'), the mayor of a town ('*burmistrz*') or the head of a town council ('*prezydent miasta*');

an oral will (only when death is imminent and it is impossible or very difficult to make a will in the ways described above) in the presence of three witnesses.

The only agreements on succession that are accepted are inheritance waiver agreements. Such agreements may be concluded by the future testator and the legal heir and must be in the form of a notarial deed to be valid.

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

A will need not be registered to be valid. Wills drawn up in the form of a notarial deed or deposited with a notary may be registered with the National Council of Notaries ('*Krajowa Rada Notarialna*').

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

No restrictions on the testator's freedom to name an heir or heirs are imposed by Polish law. Likewise, the right to a reserved share does not restrict a testator's freedom to dispose of their property but protects the interests of their blood relatives and spouse, who are entitled to payment of a specified amount.

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

The following rules apply in the absence of a will:

If the deceased was not married and had no children, their parents inherit. If one of the parents is deceased at the time when the succession is opened, that parent's share is divided equally among the testator's siblings. If one of the testator's siblings died before the succession is opened, leaving descendants, their share is divided equally among the descendants. If there are no siblings or descendants, the entire inheritance is divided equally among the testator's grandparents. If one of the grandparents is deceased at the time when the succession is opened, that grandparent's share is inherited by their descendants.

If a grandparent who died before the succession is opened has no descendants, their share is divided equally among the other grandparents. If there are no relatives entitled to the succession by law, the inheritance goes to the municipality of the testator's last residence. If it is impossible to determine where the testator last resided in Poland or if the testator resided abroad, the inheritance goes to the Treasury.
If the deceased was not married and leaves children, only those children inherit.
If the deceased leaves a spouse, that spouse becomes the sole heir if there are no descendants, parents, siblings or siblings' descendants.
If the deceased leaves a spouse and children, the inheritance is divided equally among them. However, the spouse cannot receive less than a quarter of the inheritance. If the deceased leaves a spouse with whom they had a statutory joint property arrangement, the surviving spouse receives half of the joint property for the termination of joint ownership, while the other half forms part of the deceased's inheritance.
If the testator does not leave a spouse or blood relatives entitled to the succession by law, the inheritance is divided equally between the children of the spouse of the heir whose parents were no longer living when the succession was opened (inheritance relating to stepchildren).

5 What type of authority is competent:

5.1 in matters of succession?

Applicants should refer to a notary or the court with jurisdiction over the testator's last place of residence.

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

Declarations concerning the acceptance or waiver of a succession are lodged with the court with jurisdiction over the place of residence of the person lodging the declaration, or before a notary. Persons residing abroad may lodge declarations concerning the waiver of a succession in the form provided for by the law of the place in which this action is taken.

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

There are two types of legacy under Polish law: legacy by damnation and legacy by vindication. Only legacies by vindication can be accepted or waived. This is not possible for legacies by damnation.
The authorities referred to in the previous question are competent to receive such declarations concerning legacies by vindication.

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

There are no reserves under Polish law. However, payment of a reserved share, i.e. of an appropriate sum of money, may be claimed. Declarations of waiver or acceptance of a reserved share are not submitted.

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)

A person who wishes to obtain a document confirming their status as heir may apply to the court for a certificate of inheritance or apply to a notary for a registered certificate of succession. If there are several heirs, the estate may be divided, at their request, by the court in proceedings for the winding-up of the estate or by a notary by way of an agreement for the winding-up of the estate in the form of a notarial deed.

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

A person becomes an heir or legatee respectively when the succession is opened under the law (however, the succession may be waived).

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

In principle, heirs bear unlimited liability for a deceased's debts. Heirs may limit their liability by accepting the inheritance subject to inventory. In such cases, the heirs should make an appropriate declaration before a notary or the competent court within six months of the date on which they became aware of the inheritance. Heirs are jointly liable for a deceased's debts.

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

In order to enter immovable property forming part of the inheritance in a land and mortgage register, the heir must, as a rule, present documents confirming their status as heir, i.e. a court certificate of inheritance or a notarial certificate of succession.

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?

Firstly, under Polish law, an administrator of the estate may be appointed *ex officio* or on request when, for any reason, there is a risk that the estate will not be distributed as intended. To that end, the interested party should submit an application to the court with jurisdiction over the testator's property to demonstrate that they are an heir or legatee, or are entitled to a reserved share. An application may also be submitted by the executor of a will, a co-owner of property, a person jointly entitled to the testator's rights, a creditor with a written proof of debt against the testator or a tax office.
Secondly, in the case of an unclaimed inheritance, the court appoints, *ex officio* or on request, an administrator of the estate.

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

In their will, a testator may appoint the executor, who will administer the estate after the testator's death.

9.3 What powers does an administrator have?

The executor of a will should administer the estate, pay debts under the succession, in particular execute bequests and instructions, and subsequently distribute the estate to the heirs in accordance with the will and the relevant legislation and, in all cases, immediately after distributing the estate.
The executor may sue and be sued in matters arising from the administration of the estate, an organised part thereof or a specified asset. They may also sue in matters relating to rights forming part of the inheritance and be sued in matters relating to debts under the succession.
The executor should also issue the subject of a specific bequest to the person to which such a bequest was made.

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?

A person who is a statutory heir must submit copies of appropriate civil status documents to demonstrate their relationship to the deceased (e.g. birth certificate, marriage certificate). An heir or legatee should submit the will to demonstrate their rights to the inheritance.

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Succession - Portugal

This factsheet was prepared in cooperation with the Council of the Notariats of the EU (CNUE).

If the inheritance is not contested, civil-law notaries, registry offices and land registries are competent, with no territorial jurisdiction. Interested parties may therefore carry out the acts in the institution of their choice, without territorial restrictions.
Similarly, and as mentioned above, estates may be divided before any lawyer or solicitor in the country, provided that they have been empowered as described (by a registrar or notary).

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

Dispositions of property upon death can be drawn up in two forms: (i) a will; (ii) a contract.

(i) Will

A will is a personal deed that cannot be drawn up by a representative.
Joint wills, i.e. wills made by two or more persons in the same document, either for the benefit of a third person or for their mutual benefit, are not allowed.
A will is a declaration of intent by one person alone that does not need to be addressed to or brought to the notice of a given person. It is freely revocable and assets are only transferred to heirs or legatees after the death of the testator.
Standard and special types of will exist.
Standard types of will are: **public wills (*testamentos públicos*)** and **closed wills (*testamentos cerrados*)**.
A **public will** is drawn up by a notary in their register.
A **closed will** is drawn up and signed by the testator or by another person at the testator's request, but must be approved by a notary. It may be kept by the testator or by a third person or may be filed with the notary. A person in possession of a closed will must present it within three days of the date they become aware of the testator's death, failing which they will be liable for any loss or damage caused, and if they are a successor they may lose the capacity to inherit due to disqualification by conduct.
The law provides for the following types of special will: military wills, wills made on a ship, wills made on an aircraft, wills made in the event of a disaster. A will may only be made in one of these special forms on the occurrence of certain exceptional circumstances provided for by law. Such wills are void 2 months after the cause that prevented the testator from making a will in the usual forms ceases.
Portuguese legislation also provides for a special form of will made by a Portuguese national abroad under foreign law. This takes effect in Portugal if it is made or approved formally.

(ii) Contract

The Portuguese legal system accepts succession by contract on an exceptional basis. This may occur through agreements as to succession or gifts in contemplation of marriage, which take effect upon the death of the donor. To be valid, both agreements as to succession and gifts upon death in contemplation of marriage must be set down in a marriage contract.
The rule, however, is that succession by contract is prohibited. Agreements as to succession are therefore prohibited in principle, failing which they will be invalid. Gifts in contemplation of death are also prohibited, but rather than being invalid they become testamentary dispositions by force of law and are freely revocable.
There are two types of agreement as to succession whose validity is admitted by law by way of exception: (a) appointment of an heir or legatee for the benefit of either spouse, by the other spouse or by a third person; (b) appointment of an heir or legatee for the benefit of third persons by either spouse. The distinction between heir and legatee is explained below in answer to the question 'How and when does one become an heir or legatee?'
Valid agreements as to succession take effect only after the death of the testator. The agreement referred to in (a) above, however, cannot be revoked unilaterally after it has been accepted, and while the testator is alive they cannot prejudice the beneficiary by gratuitous dispositions. The agreement as to succession referred to in (b) above is freely revocable if the third person was not involved in the marriage contract as an accepting party.
In addition to these two types of agreement as to succession, the law also accepts the validity of gifts upon death in contemplation of marriage. These are given in contemplation of marriage to one of the spouses by the other or by a third person. A gift upon death in contemplation of marriage is subject to the rules on agreements as to succession and must be set down in the marriage contract.

NB:

Portuguese law provides for two types of succession. One is voluntary succession – by will or contract – referred to in this answer. The other is legal succession – legitimate or compulsory – which will be mentioned in the answers to the questions 'Are there restrictions on the freedom to dispose of property upon death (e.g. reserved share)?' and 'In the absence of a disposition of property upon death, who inherits and how much?'.
Voluntary succession is a result of an act of will on the part of the testator, as in the case of wills and contracts.
Legal succession is accepted by law. It is known as compulsory succession (sucessão legitimária) when it is a direct result of the law and cannot be overridden by the wishes of the testator. It is known as legitimate succession (sucessão legítima) when it results from the law but can be overridden by the wishes of the testator.

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

In principle, dispositions do not need to be registered.

There are exceptions, however, which are enshrined in various legal provisions. Dispositions of property upon death must be registered, for example, in the following cases: (i) preferential testamentary disposition given real effectiveness; (ii) establishment of a prerogative and its amendments; (iii) obligation to reduce gifts subject to collation; (iv) marriage contracts.
In the cases indicated in (i), (ii) and (iii) above, the record must be filed with a land registry (*Conservatória do Registo Predial)* by the claimants or respondents in the legal relationship, persons who have an interest in the registration or persons who are required to promote the registration pursuant to the law (official registration promoted in some cases by the courts, the Public Prosecution Service or the registrar him or herself). The registration is drawn up by means of a property description, entry of the facts and respective comments and the noting of certain circumstances.
In the case indicated in (iv), the registration is drawn up in a registry office (*Conservatória do Registo Civil*) as an entry or record through a declaration by the parties. In this case, persons to whom the fact relates directly or whose consent is required to make it fully effective may also be party to the registration.
NB:
The prerogative involves the right of the surviving widow or widower to maintenance by the funds left by the deceased.
Collation involves the return to the estate, by descendants who hope to inherit, of assets or valuables given by an ascendant relative.

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

Yes, under Portuguese legislation the reserved share is a restriction on the freedom to make dispositions of property upon death. The reserved share is the portion of assets the testator cannot dispose of because it is assigned by law to the compulsory heirs (*herdeiros legitimários*). This is compulsory succession, which is a form of legal succession that cannot be overridden by the wishes of the testator.

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

If the deceased has not made a valid and effective disposition, in full or in part, of the property to be disposed of subsequent to their death, their legitimate heirs (*herdeiros legítimos*) are designated as the successors. This is known as legitimate succession, which is a form of legal succession that can be overridden by the wishes of the testator.
The **legitimate heirs** are the spouse, relatives and the state, in the following order:
a) spouse and descendants;
b) spouse and relatives in the ascending line;
c) siblings and their descendants;
d) other collateral relatives up to and including the fourth degree;
e) the state.
The **compulsory heirs** are the spouse, descendants and ascendants. The spouse and descendants form the first category of successors. In the absence of descendants, the spouse and ascendants are the successors.
It is not possible to leave the entire inheritance to someone who is not a legitimate heir, not even by making a will (Article 2156 of the Civil Code). The law stipulates that only part of the inheritance, the so-called available quota, is available. The remaining part (legitimate share) must be handed over to the compulsory heirs, the value of which depends on the type of heir:
The only compulsory heir is the spouse: 50% available quota; 50% legitimate quota (Article 2144 of the Civil Code);
Spouse and children: The legitimate share is two thirds of the inheritance; one third of the available quota (Article 2139 of the Civil Code);
Without spouse but with children: the legitimate share of the children is half or two thirds of the inheritance, depending on whether there is a single child or two or more children (Article 2139(2) of the Civil Code);
Without descendants but with a spouse and relatives in the ascending line: the legitimate share is two thirds of the inheritance; the available quota is one third (Article 2142 of the Civil Code).
NB:
The spouse is not designated as an heir if at the time of the testator's death they are divorced or legally separated by a final judgment or a by a judgment which is to become final. When divorce or legal separation proceedings are pending at the time of the testator's death, the beneficiaries may continue such proceedings for the property consequences. In the latter case, if the divorce or separation is subsequently granted, the spouse is not designated as a beneficiary. The same applies where the spouses have entered into a marriage contract before they marry under the separation of property regime, opting to waive each other's inheritance reciprocally (Article 1700(1)(c) and (3) and Article 1707a of the Civil Code).

5 What type of authority is competent:

Competence in matters of succession depends on whether the succession is contested (acceptance under benefit of inventory) or not (acceptance pure and simple).
Notaries and the courts are competent in matters of contested succession. For cases provided for in Article 1083(1) of the Code of Civil Procedure (e.g. heirs whose whereabouts are unknown, heirs without legal capacity, inventory required by the Public Prosecution Service), the inventory must be carried out in the courts. In other cases, the persons concerned may choose to take the inventory to a notary's office (*Cartório Notarial*) or a court.
Notaries and registrars (*Conservatórias dos Registos*) are also competent in matters of uncontested succession. In this case, they are competent to empower heirs and carry out the respective division.
By authenticating a private document, lawyers and solicitors can divide uncontested estates but are not competent to empower heirs.

5.1 in matters of succession?

If the inheritance is contested, either the courts or notary's offices can conduct the inventory, in accordance with Article 1083 of the Code of Civil Procedure.
No inventory proceedings (*processo de inventário*) are required in the event of acceptance of the inheritance pure and simple. In this case the heirs and legatees wind up and share out the inheritance by mutual agreement, with no obligation to open proceedings involving a notary or court.
When an estate is declared to be in abeyance to the State, the respective special procedure to wind up the succession for the benefit of the State is conducted in court (Articles 2152-2155 of the Civil Code).
If the inheritance is not contested, civil-law notaries, registry offices and land registries are competent, with no territorial jurisdiction. Interested parties may therefore carry out the acts in the institution of their choice, without territorial restrictions.
For uncontested inheritances, estates may be divided before any lawyer or solicitor in the country, provided that the persons concerned have been previously empowered (e.g. by a registrar or notary).

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

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

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

As regards the authority competent to receive a declaration of acceptance or waiver of succession, there are no substantial differences between a legacy and an inheritance, or between legal or voluntary succession. The answer to these three questions is therefore the same.

If the succession has been accepted under benefit of inventory, the declaration of acceptance is made in the inventory proceedings. In this case, the court or the notary are the authorities competent to receive the declaration of acceptance.
Acceptance of succession under benefit of inventory is ensured by requesting the inventory or intervening in it.
Another type of acceptance of succession is acceptance pure and simple, which occurs when the succession is accepted and divided without the need for inventory proceedings.
The rules relating to acceptance of succession also apply to acceptance of a legacy. The difference between inheritance and legacy is set out in the answer to the following question.
If inventory proceedings are opened, the waiver must be effected or included in the file. In this case, the court or notary are the authorities competent to receive the declaration of waiver.
The waiver must take one of the following forms: public deed or private certified document if assets exist which the law requires to be disposed of in one of these forms; a private document in other cases.
An acceptance or waiver of an inheritance or legacy is a unilateral legal transaction that cannot be repudiated, i.e. both are done through a declaration by the successor that does not need to be addressed to or brought to the attention of a given person.
If the estate is in abeyance, interested parties or the Public Prosecution Service may ask the court to notify the heir to accept or waive the inheritance (Articles 1039-1041 of the Code of Civil Procedure). In this case the court receives the declaration of acceptance. The estate is deemed to be in abeyance during the period in which it has not yet been accepted nor declared as in abeyance to the State.

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 procedure depends on whether the succession is contested or not.

CONTESTED SUCCESSION

The purpose of inventory proceedings for succession is: to share out the estate to draw its co-ownership to a close; to list the estate's assets if it is not necessary to share them out; to wind up the estate if necessary (Article 1082 of the Code of Civil Procedure).
When the inventory is brought before a court, it follows the form of judicial inventory provided for in Title XVI of Book V of the Code of Civil Procedure (Articles 1082-1129). The internal local jurisdiction of the national courts is determined in accordance with the connecting factors set out in Article 72A of the Code of Civil Procedure.
The main stages of the judicial inventory process are: (i) initial request; (ii) opposition and verification of liabilities; (iii) prior hearing of the interested parties; (iv) identification and convening of interested parties; (v) reduction of gifts or legacies that exceed the disposable portion; (vi) statement on the division and judgment ratifying the division. The judgment may be followed by a cancellation or alteration of the division, an additional division or the allocation of a share to an overlooked heir.
When the inventory is brought before a notary's office, it follows the form of notarial inventory provided for in the Annex to Law No 117/2019 of 13 September 2019 referring to the necessary amendments to Title XVI of Book V of the Code of Civil Procedure.
In line with Articles 1-5 of the Annex to Law No 117/2019: the Portuguese Notary Association publishes on its website (Portuguese Notaries) a list of notaries who can process inventories (www.notarios.pt); for notarial inventories, while it is the task of the notary to take the necessary action, the ratifying judgment is always issued by the court to which the case is referred for that purpose, without prejudice to any other issues the notary may refer to the judge for a ruling; it is the task of the court to rule on appeals brought during the notarial inventory process; the parties are free to choose the notary's office where the inventory process takes place, provided there is a relevant link with the succession (e.g. the notary's office is situated in the municipality where the succession was opened or where the assets are located or where most of the interested parties live).

UNCONTESTED SUCCESSION

The interested party may settle matters before a notary or registrar. Via the registrar's one-stop shop system, they may deal with all succession-related issues, from authorisation to the final recording of assets resulting from the division.
Alternatively, once empowered as heirs in a notary's office or registry, interested parties may share out estate assets by means of a private document certified before a lawyer or solicitor.

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

Heirs inherit the estate of the deceased in total or in part, i.e. the assets they are to inherit are not predetermined.
Legatees on the other hand inherit particular assets or valuables.
In legal succession, eligibility arises out of the law. In voluntary succession, eligibility arises out of a declaration of intent by the testator. Successors may have the status of heirs or legatees in either legal or voluntary succession.

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

If the estate is accepted under benefit of inventory, only property listed in the inventory is liable for the deceased's debts and other succession charges, unless the creditors or legatees prove that other assets exist. If there is an inventory, the burden of proof that such other assets exist lies with the creditors or legatees.
In the event of acceptance pure and simple, liability for debts and other succession charges similarly does not exceed the value of the assets inherited, but in this case it is up to the heirs or legatees to prove that the estate does not include assets of sufficient value to pay the debts or satisfy the legacies. Here the burden of proof that such other assets do not exist lies with the heirs or legatees.
The estate is liable for the following charges: the testator's funeral and related expenses; charges for executorship and the administration and winding-up of the estate; payment of the deceased's debts; satisfaction of legacies.
Jointly inherited assets are collectively liable for meeting the above charges. When the estate has been divided, each heir is liable only for an amount pro rata to their share of the inheritance.

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

The following answer shows separately the documents and information required to register immovable property, the fees payable and how the application for registration can be submitted (in person, by post or online).

Documents and information required

Applications for registration of immovable property must identify the applicant, the facts and the properties concerned and the list of supporting documents.
Only facts set out in documents that legally substantiate them may be registered.
Documents in a foreign language may only be accepted when translated in accordance with the law, except when they are drafted in English, French or Spanish and the competent official has a command of the language concerned.
When the viability of an application for registration has to be assessed on the basis of foreign law, the interested party must prove its content by means of an appropriate document.

If an application for registration concerns a building which is not described, an additional declaration must be attached indicating the name, status and address of the owners immediately prior to the transferor and the previous property register article, unless the applicant states in the declaration why this is not known.
If the registration concerns a share in an undescribed joint property, the name, status and address of all *co-owners* must also be declared.

Fees payable

The fee must be paid on submission of the application or must be sent with it. The fee corresponds to the likely total amount payable. If this is not paid when the application for registration is submitted, the application may be immediately rejected.
When the fee has not been paid and the application has not been rejected, the registration service notifies the interested party of the time-limit for paying the amount unpaid if registration is not to be rejected.
The same procedure is followed when the amount initially paid is insufficient and no additional amount is paid.

Application for registration in person, by post or online

Applications for registration of immovable property may be submitted in person, by post or online.
Applications for registration in person and by post must be in writing, in accordance with the forms approved by a decision of the governing body of the Institute of Records and Notaries (*Instituto dos Registos e do Notariado, I.P.)*. Documents substantiating the fact to be registered and the above-mentioned additional declarations, if any, must accompany the forms.
The forms referred to in the preceding paragraph do not have to be used for applications for registration in writing by public authorities involved as claimants or respondents in acts by the courts, the Public Prosecution Service, insolvency administrators or enforcement agents, whether submitted in person or by post.
Applications made by the courts, the Public Prosecution Service, enforcement agents or bailiffs who carry out measures particular to enforcement agents and court administrators should preferably be sent electronically, accompanied by the documents required for registration and the amounts payable.
Applications to register property can be done online at Predial Online. The only procedures that cannot be registered online are procedures justifying, rectifying or challenging decisions taken by a registrar.
A digital certificate is required to apply for property registration deeds online. Nationals holding a Portuguese identity card who have activated their digital certificate, lawyers, notaries and solicitors already have these certificates.
Managers and directors of commercial companies or civil law companies having a commercial form may certify that electronic documents they have submitted conform to the original paper documents when they submit applications for registration online in which the respective companies are interested parties.

NB:

Only persons and/or entities the law deems to be legitimate may submit applications to register immovable assets. These persons or entities are identified above in the answer to the question 'Should the disposition be registered and if yes, how?' in the section indicating the records to be submitted to the Land Registry.

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 mandatory if inventory proceedings are sought. In this case it is mandatory to appoint the head of household responsible for administering the succession. The person applying for inventory proceedings specifies who is required under the law to perform the duties of head of household. This is done on the form used for applying for inventory proceedings.
While an estate is in abeyance there may not be anyone who is legally entitled to administer it. In this case any heir may take action to administer the succession even before it is accepted or waived. If there is a risk of loss or deterioration of the assets in the estate in abeyance, the courts appoint a curator. This is done at the request of the Public Prosecution Service or of any interested party. The definition of an estate in abeyance has already been given in the answer to the question *'What type of authority is competent: (...) to receive a declaration of waiver or acceptance?'*

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

Head of household

The head of household is responsible in principle for administering the estate until it is wound up and shared out.
Under the law, the duty of head of household is delegated in the following order:
to the surviving spouse, not legally separated in person or property, if they are an heir or have a marital portion of the couple's assets;
to the executor, unless stated otherwise by the testator;
to relatives who are heirs at law;
to the testamentary legatees.
If the whole estate is shared out to legatees, the most favoured legatee will act as head of household, replacing the heirs; other things being equal, the oldest will be preferred.
There are specific cases in which the administration of part or all of the assets in the estate may be entrusted to the executor or the trustee, as will be explained below.

Executor (*testamenteiro*)

In the event of succession by will, the testator may appoint one or more persons who are required to ensure that the will is carried out or to execute it fully or in part. This is known as executorship. The person appointed is the executor.

Trustee (*fiduciário*)

Replacement of the trustee, or trusteeship, is a disposition by means of which the testator entrusts the designated heir with the task of preserving the inheritance so that it reverts to the benefit of another on their death. The heir given this duty is called the trustee. The beneficiary of the replacement is known as the trustee heir. The trustee benefits from and administers the assets under trusteeship.

9.3 What powers does an administrator have?

Powers of head of household

The head of household administers the assets of the deceased and, if the latter was married under community of property, the common assets of the couple.
The head of household may ask heirs or a third person to hand over assets he or she is to administer which they have in their possession. The head of household may bring actions for possession against heirs or against a third person and may recover the estate's receivables when delay would jeopardise their recovery or when payment is made spontaneously.
The head of household must sell the fruits or other perishables and may use the proceeds to meet funeral and related expenses and administration fees.
The head of household may also sell non-perishable fruits to the extent necessary to meet funeral and related expenses and administration fees.
Outside the cases referred to above, the rights relating to the succession may only be exercised jointly by all heirs or against all heirs.

Powers of the executor

If an executor has been appointed in testamentary succession, they hold the powers granted by the testator.

If the testator does not specify the powers of the executor, the latter is responsible for the following: dealing with the funeral and related arrangements and paying the respective expenses; monitoring the performance of dispositions upon death and maintaining their validity before the courts, where necessary; performing the duties of head of household.

The testator may entrust the executor with satisfying the estate's legacies and other liabilities when they are head of household and a mandatory inventory is not needed. For this purpose the executor may be authorised by the testator to sell any estate assets (whether movable or immovable) or those designated in the will.

Powers of the trustee

The trustee not only administers but also receives the benefits of the assets under trusteeship. The provisions relating to the enjoyment of such assets in so far as they are not incompatible with the trusteeship are applicable. The trustee requires court authorisation to dispose of or encumber assets under trusteeship.

Heirs and curator for an estate in abeyance

While an estate is in abeyance, it constitutes a fund with legal personality. The estate may therefore initiate proceedings and proceedings may be initiated against it. If there is no one to administer the estate in this case, one of the solutions set out below may be adopted.

Before accepting or waiving the succession, any heir may take urgent administrative measures while the estate is in abeyance. If an objection is raised when there are several heirs, the will of the majority prevails.

A curator for the estate in abeyance may also be appointed by the courts. The curator is responsible for applying for the necessary interlocutory proceedings and for bringing actions that cannot be delayed without putting the interests of the succession at risk. The curator is also responsible for representing the estate in all actions brought against it. The curator requires judicial authorisation to dispose of or encumber fixed assets, precious objects, valuables, commercial establishments and any other assets the disposal or encumbrance of which is not an administrative act. Judicial authorisation will only be granted when the act is justified to avoid deterioration or loss of the assets, to pay the estate's debts and to meet the cost of necessary or useful improvements, or if another urgent need arises.

When the estate is no longer in abeyance because it has been accepted but remains undivided, the law allows any heir to apply for judicial recognition of their status as an heir and the restoration of all or part of the estate's assets against whoever possesses them as an heir or by another entitlement, or without entitlement. This is known as a petition for possession (*petição da herança*). This action can be taken by a single heir unaccompanied by the others, but does not infringe the right of the head of household to call for the assets he or she is to administer to be handed over, as referred to 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?

Documents confirming the status of heirs or legatees

Judgments;

Notarial deeds;

Simplified procedures for confirming the status of heirs issued by a registry office.

The above attest to the status of heirs and/or legatees who survive the deceased.

Judgments, notarial deeds and simplified procedures for empowering heirs are authentic instruments with full evidentiary value.

The empowering of heirs or legatees is recorded at the registry office by means of an endorsement on the deceased's death certificate.

Documents confirming the division

In contested succession:

A judgment given by the competent court that ratifies the division of the estate in inventory proceedings. The judgment determines how the shares are satisfied (e.g. the assets to be inherited by each heir or legatee). This is an authentic instrument with full evidentiary value.

In voluntary succession:

A private certified document drawn up before a lawyer or solicitor, which establishes how the shares are satisfied. This is not an authentic instrument but a private certified document which in this case has evidentiary value equivalent to full evidentiary value.

A document covering the division in simplified succession proceedings before the registrar. This is an authentic instrument with full evidentiary value.

A notarial deed of division drawn up by the notary. This is an authentic instrument with full evidentiary value.

Any of the above documents which confirm the division may form the basis for registering the estate's assets for the benefit of the heir or legatee, irrespective of whether they have full evidentiary value.

Related links

Code of Civil Procedure (*Código de Processo Civil*)

Civil Code (*Código Civil*)

Law No 117/2019 of 13 September 2019

Warning

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Succession - Romania

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?

Joint wills and agreements as to succession are prohibited by Romanian law.

Ordinary wills may be either holographic or authentic.

A holographic will is written, dated and signed by the testator and, before execution, it is presented to a civil law notary in order to be duly stamped and validated.

An authentic will is executed by a civil law notary or another person vested with public authority. The testator dictates it to the notary, who will write it down and read it out, specifying the formalities. If the will has been already drafted by the testator, it is read out by the notary, and the testator declares that it represents his last will. The will is signed by the testator, while the authentication certificate is signed by the notary. During the authentication, the testator may be accompanied by one or two witnesses.

Privileged wills made in special situations by certain serving officers, in the presence of two witnesses, have the evidentiary effect of an authentic instrument.

In the case of amounts of money to be bequeathed to specialised institutions, the specific formal requirements laid down in the special acts governing their organisation must be met.

The will **contains** provisions concerning the designation of the (in)direct legatee, partition, disinheritance, appointment of executors of the will, responsibilities, revocation of legacies, etc.

The provisions regarding the transfer of the estate/assets of the deceased are called legacies. **Legacies** fall into the following categories: universal legacies or legacies under a universal/particular title. **A universal legacy** confers rights to the entire inheritance, **while a legacy under a universal title confers rights** to a fraction of the inheritance.

See Article 1034 et seq. of the Civil Code.

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

The notary authenticating the will must register it in **The National Notarial Register for the evidence of liberalities (*Registrul național notarial de evidență a liberalităților RNNEL*)**, where donations are also registered.

See Article 1046 of the Civil Code, Article 164 of Act No 36/1995 on public notaries and notary activities, republished.

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

The reserved portion of the succession is the part of the inheritance to which forced heirs (surviving spouse, descendants, and privileged ascendants – parents of the deceased) are entitled, even against the wishes of the deceased. The reserved portion for each forced heir is half of the share which would have been due to them as an heir at law, in the absence of any liberalities or disinheritance in the will.

See Article 1086 et seq. of the Civil Code.

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

The inheritance goes to the heirs at law, namely the surviving spouse and relatives of the deceased, in the following order:

descendants – first order of heirs

ascendants and privileged collateral relatives – second order of heirs

ordinary ascendants – third order of heirs

ordinary collateral relatives – fourth order of heirs

Descendants and ascendants are entitled to the inheritance regardless of their degree of relationship to the deceased, while collateral relatives are entitled thereto up to the fourth degree.

Only descendants of the children of the deceased and descendants of the siblings of the deceased may take part in the inheritance by right of representation. In the case of representation, the inheritance is distributed according to parental line. If a line has more than one branch, subdivision takes place within the line, equally dividing the due portion of the inheritance.

The surviving spouse participates in the succession together with any of the orders of heirs at law according to the following proportion:

1/4 of the estate, if the remainder passes to the descendants

1/3 of the estate, if the remainder passes to the privileged ascendants and privileged collateral relatives

1/2 of the estate, if the remainder passes either to the privileged ascendants, or the privileged collateral relatives

3/4 of the estate, if the remainder passes either to the ordinary ascendants, or to the ordinary collaterals.

The surviving spouse may be entitled to the right to reside in the marital home and may also inherit the household furniture and common household appliances.

Descendants, the children of the deceased and their direct descendants, exclude any heirs in the other categories and are entitled to the inheritance in the order of the proximity of the degree of relationship. If the surviving spouse stands to inherit, descendants collectively receive ¾ of the inheritance.

The privileged ascendants are the father and the mother of the deceased, with the inheritance due to them to be divided equally.

The privileged collateral relatives are the siblings of the deceased and their descendants, up to the fourth degree.

If the surviving spouse participates in the inheritance together with both privileged ascendants and privileged collateral relatives, the portion due to the second order of heirs is 2/3; the portion due to the second order of heirs is 1/2 if there are privileged ascendants or privileged collateral relatives, but not both.

The inheritance due to the privileged ascendants and privileged collateral relatives is divided between them depending on the number of privileged ascendants. If there is a single parent, he/she will collect 1/4, while the privileged collateral relatives will be entitled to 3/4. If there are two parents, they will jointly collect 1/2, while the privileged collateral relatives will be entitled to the remaining 1/2.

The inheritance of the privileged collateral relatives is divided equally between them or, if they take part in the inheritance by right of representation, between parental lines. In the case of different collateral relationships, the inheritance is divided equally between the maternal and paternal line, and the previous rules apply. Collateral relatives who are related to the deceased on both lines receive cumulated portions.

Where there are no heirs, **the inheritance is deemed vacant**, and is collected by the municipality, town or city where the estate is located at the time of opening of the succession.

See Articles 970 to 983, Articles 1135 to 1140 of the Civil Code.

5 What type of authority is competent:

5.1 in matters of succession?

The competent bodies for non-contentious succession procedures are notaries, while courts of first instance ('judecătorie') are responsible for contentious succession proceedings.

The heir or any other interested person may apply directly to the court by submitting a notarised certificate concerning the verification of the succession registry.

See Article 103 et seq. of Act No 36/1995, Article 193 of the Code of Civil Procedure.

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

An heir expressly accepts the inheritance when they explicitly take on the title/capacity of heir. Such acceptance is tacit when it is done through an act or an action which can only be carried out by a person in their capacity as heir (Article 1108 of the Civil Code).

The declaration of waiver of succession is made before a notary or before a diplomatic mission or consular representation of Romania (Article 1120(2) of the Civil Code).

All notarial instruments referring to the acceptance or the waiver of succession are registered in the National Notarial Register for the evidence of successional options (*Registrul național notarial de evidență a opțiunilor succesorale RNNEOS*).

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

See 5.2.

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

See 5.2.

After the opening of a succession procedure, any liberalities infringing the succession reserve may be subject to clawback at the request of forced heirs, successors and unsecured creditors of forced heirs. In the case of multiple forced heirs, clawback is applicable only within the limit of the reserved portion due to the applicant and benefits only the latter. As a result of clawback, legacies may become ineffective and donations may be cancelled.

See Articles 1092 to 1097 of the Civil Code.

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 notarial succession procedure is opened on request. The request is registered in the notary's succession registry following registration in the succession registry of the chamber of notaries. The appointed notary verifies their territorial jurisdiction and orders the summoning of those entitled to the inheritance and, where there is a will, summons the legatee, executor of the will, legal representative of the legally incompetent heir, supervisory body (where applicable), public administration representative (in the event of a vacant succession). The notary determines the capacity of the heirs and legatees, the extent of their rights and the composition of the estate of the deceased person.

The number of heirs and the capacity of heir and/or title of legatee are determined on the basis of civil status certificates, by means of a will, and with the assistance of witnesses. Assets are proven through official documents/any other means of proof recognised by the law.

See Articles 103 to 120 of Act No 36/1995, republished.

The heir/other interested person may apply directly to the competent court by submitting a notarised certificate concerning the verification of the succession registry. Judicial partition may be carried out by agreement between the parties. In the absence of such agreement, the court will decide on the partition of the assets, the status of heir, the shares in the estate, receivables, debts and obligations. The court may give a ruling on any clawback of excessive liberalities and the restoration of donations. The division of assets is carried out in kind, lot by lot or by assigning individual assets to one of the heirs subject to payment of financial compensation to the remaining heirs. The court may order the selling of the property, with the consent of the parties or by an enforcement officer by public auction. The court will hand down a judgment and will decide on the division of the amounts deposited by one of the heirs for the others and those resulting from the sale.

See Article 110 of Act No 36/1995, Article 193(3) of the Code of Civil Procedure.

With the approval of all heirs, the notary may begin the **liquidation of the succession liabilities** i.e. collection of receivables, payment of debt and liabilities, sale of movable/immovable property, and execution of particular legacies.

In the mandatory preliminary phase, the notary will issue **a certificate of succession liquidation**, which sets out the estate (receivables and liabilities), the heirs, their respective shares, and their consent regarding the means of liquidation of the liabilities, the appointment of a liquidator and the deadline for completion.

The liquidator collects the receivables under the succession, pays the debts and sells the assets. The liquidator submits a report to the appointed notary, setting out the operations carried out for the collection of the receivables and the arrangements for settling the debts. After completion, the notary issues a **certificate of succession**, and the net product of the liquidation is marked in the estate.

See Articles 121 to 134 of Act No 36/1995, Article 1114 of the Civil Code.

The **partition of the estate** between heirs is carried out after the issuing of the certificate of succession following liquidation. The partition of the estate may be voluntary. Restoration of donations is the obligation of the surviving spouse and the descendants of the deceased who are entitled to the legal inheritance to restore any donated assets that were not exempt from such an obligation.

Payment of liabilities. Exceptions to the statutory division of the liabilities of the inheritance

The universal heirs and heirs under universal title must contribute to the payment of the debts and obligations of the estate in proportion to their respective share.

The personal creditors of the heirs and any interested person may request the partition of the inheritance and may exert their right to be present at the voluntary division or to intervene in the division. The creditors' requests are registered in The National Notarial Register for the Evidence of Creditors Natural Persons and the Evidence of Oppositions to the Fulfilment of Successional Partition (*RNNEC – Registrul național notarial de evidență a creditorilor persoanelor fizice și a opozițiilor la efectuarea partajului succesoral*).

The universal heir/the heir under a universal title who has paid a larger share of the common debt has a right of recourse against the others, but only for the part of the common debt corresponding to each of the heirs, even where they have been subrogated to the rights of the creditors.

Partition of ascendants' assets

Ascendants may divide their assets between descendants by means of donation or a will. If not all assets of the inheritance have been included, the assets not included are divided in accordance with the law.

See Articles 669 to 686, Articles 1143 to 1163 of the Civil Code.

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

A person may inherit if they exist at the time the succession is open and/or have the capacity to receive liberalities, are entitled to the succession, have not been disqualified by conduct, and have not been disinherited.
The person called to receive an inheritance may accept or waive the inheritance. A legatee who is an heir by operation of law may exercise either one of these capacities. If, despite the reserve not having been infringed, the will shows that the deceased intended to reduce the share due to the legal heir, the latter may only act as a legatee.
See Articles 957 to 963, 987, 989, 993, 1074 to 1076, 1100 and 1102 of the Civil Code.

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

Yes, see point 6.

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

The request for registration in the land register must be accompanied by the original document or a notarised copy thereof and, in the case of a court judgment, an authenticated copy with the remark 'final'. The land registrar registers the property if the document meets several formal requirements: identification of the party and of the real estate; the existence of a notarised translation (in the case of an authentic notarial instrument, it must be issued by a Romanian notary); the existence of excerpts from the land register; payment of the fee, etc. The first registration of the real estate in the integrated information system of cadastre and land registry can be also be based on the certificate of succession and the cadastral documentation.

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?

Voluntary appointment

The testator may appoint one or more persons, conferring them powers to execute the will. The executor of the will manages the estate for up to two years after the opening of the succession. This period may be extended by a court decision.

Mandatory appointment

If the debtor has died prior to the appointment of an enforcement officer, enforcement cannot be launched. If the debtor has died after enforcement has been launched, the proceedings may not continue until the inheritance has been accepted or a curator of the succession/special succession curator has been appointed. If the creditor or the enforcement officer becomes aware that the debtor has died, they must ask the chamber of the civil notaries in the jurisdiction where the deceased was last domiciled to enter a note in the special register concerning the enforcement proceedings and issue a certificate. The certificate must state whether the inheritance has been settled and, if so, list the heirs and indicate whether a curator was appointed pending the acceptance of the inheritance.
If there is a risk that the assets may be sold, lost, replaced or destroyed, the notary will place them under seal or hand them over to a custodian.
Until the inheritance has been accepted or where the heir is unknown, the notary may appoint a special succession curator *in order to protect the rights of the potential heir*.
See Article 686 of the Code of Civil Procedure, Article 1117(3), Article 1136, Articles 1077 to 1085 of the Civil Code.

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

The executor of the will, the liquidator, an heir by operation of law/heir entitled under a will, appointed custodian/curator (See point 9.1).
The liquidator, who carries out their responsibilities under the supervision of the notary, may be appointed by the deceased, the heirs or the court.
See Article 124 of Act No 36/1995, Article 1117(3), Article 1136 of the Civil Code.

9.3 What powers does an administrator have?

See point 9.1.
The executor of the will affixes the seals, draws up the inventory, requests that the court approve the sale of the assets, pays the debts under the inheritance and collects the receivables.
See Articles 1077 to 1085 of the Civil Code, Articles 103 to 134 of Act No 36/1995.

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 notary draws up reasoned **conclusions** and, following the settlement of the succession, issues a final certificate based on which the certificate of succession/the legatee certificate is issued.
The **certificate of succession** includes the arrangements for determining the extent of the rights and serves as a proof of the status of heir and of the property rights. The notary may issue a **certificate of the status of heir**, which states the number of theirs, their status and the extent of their rights, but not the estate. Where there are no heirs, the inheritance is considered vacant, and a **certificate of succession vacancy is issued**.
The notary may resume the procedure in order to issue the final notarial certificate with the omitted assets, and will issue an **addendum to the certificate of succession.**
A person who believes they have suffered damages may apply to the court to annul the certificate and determine their rights. **In the event of an annulment, the notary will issue a new certificate of succession based on the final court decision**. The interested parties may also have an authentic instrument drafted by a public notary certifying the amicable settlement of the dispute. In this case, a new certificate of succession will be issued. Pending the amicable settlement of the dispute by means of a notarial act, or pending the annulment of the certificate of succession by the court, the new certificate will serve as proof of the status of heir by operation of law or heir entitled under a will, and of the property rights of the heirs accepting assets listed in the estate in proportion to their respective share.
A universal heir/heir under a universal title may, at any time, seek recognition of that status against any person unduly possessing assets from the estate by launching **proceedings claiming the rights of an heir**.
In contentious succession proceedings, the courts hand down rulings, decisions and judgments. The partition decision has a constitutive effect and is enforceable after it becomes final.
See Articles 1130 to 1134, Articles 1635 to 1639 of the Civil Code, Articles 113 to 120 et seq. of Act No 36/1995.

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Succession - Slovenia

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?

a) Wills: A will is valid if it has been compiled in a form determined by the Inheritance Act (hereinafter: ZD) and under the conditions set out in that act.

The ZD recognises the following forms for wills: a holographic will, a will signed in the presence of witnesses, a court will, an oral will, a will compiled abroad, a will compiled on board a Slovenian vessel, a will compiled during a state of emergency or war, and an international will.

The ZD provides the following with regard to the requirements relating to the form of a will:

A **holographic will** is valid if the testator has written and signed it themselves (Article 63(1) of the ZD).

A testator who knows how to read and write compiles a **will signed in the presence of witnesses** by signing a document compiled on their behalf by another in their own hand in the presence of two witnesses and declaring before these witnesses that this is their will. The witnesses sign their names on the will itself in a postscript to the effect that they are signing as witnesses, where this postscript is not a condition validating the will (Article 64 of the ZD).

A **court will** may be compiled for a testator, at their request, by the judge of a competent court who first establishes the testator's identity. The testator then reads and signs the will and the judge confirms on the will that the testator read and signed it in their presence. If the testator does not know how to read the will compiled by the judge, or is unable to do so, the judge reads the will to the testator in the presence of two witnesses. The testator then signs the will in the presence of the same witnesses or places their mark thereon after declaring that this is their will. The witnesses then place their signatures on the will (Articles 65 and 66 of the ZD).

A **will compiled abroad** may be compiled for a citizen of the Republic of Slovenia abroad, in accordance with the provisions applying to the compiling of court wills, by a consular representative or a diplomatic representative of the Republic of Slovenia who conducts consular matters (Article 69 of the ZD).

The captain of a ship may **compile a will on board a Slovenian vessel** in accordance with the provisions applying to the compiling of a court will. The will ceases to be valid 30 days after the testator's return to the Republic of Slovenia (Article 70 of the ZD).

Will compiled during a state of emergency or war: during a state of emergency or war, a company commander or commander of an equivalent or higher unit, or anyone else in the presence of a commander, may compile a will for a member of military staff in accordance with the provisions applying to the compiling of a court will. The will ceases to be valid 60 days after the end of the state of emergency or war if the testator's military service ends before or after this, or 30 days after the testator's military service has come to an end (Article 71 of the ZD).

An **international will** must be compiled in written form. There is no requirement for the testator to write the will in their own hand, and the will may be written in any language, by hand or in some other way. The judge of a competent court may compile an international will at the request of a testator, while for a citizen of the Republic of Slovenia abroad this may be done by a diplomatic or consular representative referred to in Article 69 of the ZD (hereinafter: authorised person). The testator must declare, in the presence of two witnesses and the authorised person, that this is their will and that the testator is aware of its contents, and sign the will in their presence or, if the testator has already signed the will, acknowledge and confirm that the signature is theirs. If the testator is unable to sign, he/she informs the authorised person of the reason. The authorised person records this on the will. The testator may, in addition to this, request that another person sign the will on their behalf. The witnesses and the authorised person append their signatures, in the testator's presence, in a postscript that states that they signed as witnesses or as the authorised person (Article 71a of the ZD). The act further provides more detail of who may act as a witness to an international will (Article 71b), the signatures and dates appended to an international will (Article 71c), the keeping of an international will (Article 71č), the cancellation of an international will (Article 71d), the confirmation of an international will (Article 71e), the confirmation that an international will is valid (Article 71f), and validity regarding the form and the formalities for signatures (Article 71g).

Oral will: a testator may swear their last will and testament orally in front of two witnesses only if exceptional circumstances mean that they are unable to compile a written will. An oral will ceases to be valid 30 days after the exceptional circumstances under which it was compiled have come to an end (Article 72 of the ZD). The act further provides more details on who may act as a witness to an oral will (Article 73), what the duties of that witness are (Article 74), undue disposition in an oral will (Article 75), the deadline for enforcing the invalidity of a will (Article 76) and proof of the existence of a will (Article 77 of the ZD).

The Notaries Act (hereinafter: ZN) also provides for a notarial will, which is a will which a notary compiles in the form of a notarial record as dictated by the testator, and a will which the testator, having first made a written declaration of their last will and testament, delivers to a notary for confirmation. A notarial will has the same legal effects as a court will (Article 46(1) of the ZN).

In addition to the above formal requirements, the capacity to make a will is also required if a will is to be valid. According to the ZD, a will may be drawn up by anyone who is capable of discernment and who has reached the age of 15 (Article 59(1) of the ZD). Where a testator compiles a will under threat, coercion or deception, or in error, that will is not valid, as the will expressed in the document does not reflect the right and true will of the testator (Article 60(1) of the ZD).

b) Joint will: The ZD makes no mention of joint wills and, since it is not one of the forms of a will provided for in law, such a will has to be regarded as invalid under Article 62 of the ZD. However, case-law only regards as invalid a will in which two people, most commonly spouses, appoint each other as heirs (this is most likely because a will of this type is very close in nature to a contract of inheritance, which is prohibited under Article 103 of the ZD), but not a will drawn up by two persons in favour of a third (see Prof. K. Zupančič, Prof. V. Žnidaršič Skubic, Dedno pravo (Inheritance law), Uradni list, 2009, pp. 127–128).

c) Contract of inheritance: Under the ZD, a contract of inheritance in which a person leaves their estate or a portion thereof to their co-signatory or to another person is invalid (Article 103); similarly, a contract on an expected inheritance or legacy (Article 104) and a contract on the content of a will (Article 105 of the ZD) are also invalid under the act.

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

No. The act does not provide for special authentication of a will.

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

Yes. Necessary heirs are entitled to a portion of the estate that the testator is not permitted to dispose of (Article 26(1) of the ZD). This portion of an estate is the 'necessary share'. Necessary heirs are: the deceased person's descendants, adopted children and their descendants, parents and spouse. Since the provisions of the ZD governing the rights, obligations, limitations and status of spouses apply equally to a man and a woman who have been in a long-standing relationship without marrying, they therefore permit them to be each other's necessary heirs, but only if there are no reasons why a marriage between the two of them would have been invalid. The same applies if extra-marital or married partners are of the same sex (are partners in a registered or unregistered civil union of two men or two women). Grandfathers, grandmothers, brothers and sisters are necessary heirs only when they are permanently incapable of work and have none of the means required for sustaining a livelihood. The persons listed above are necessary heirs if they are entitled to inherit under the statutory order of inheritance (Article 25 of the ZD).

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

In such a case, inheritance proceeds as determined by law: the deceased's estate is inherited by their descendants, adopted children and their descendants, spouse, parents, adoptive parent and that person's relatives, the deceased's brothers and sisters and their descendants, and the deceased's grandfathers and grandmothers and their descendants. A man and a woman who have been in a long-standing relationship without marrying may inherit from each other as spouses, but only if there are no reasons why a marriage between the two of them would have been invalid. The same applies if extra-marital or married partners are of the same sex, i.e. are partners in a registered or unregistered civil union of two men or two women (hereinafter: civil union (partnerska zveza)). These persons inherit in accordance with the order of inheritance, where the heirs from the closer order of inheritance exclude from inheritance persons from a more distant order of inheritance (Article 10 of the ZD).

First order of inheritance:

The deceased person's descendants and spouse, as well as extra-marital partner or partner from a civil union, are in the first order of inheritance, and inherit equal shares before all others (Article 11 of the ZD).

On the basis of per stirpes distribution, the part of the estate that would initially have gone to a person if they had outlived the deceased is inherited by their children (the deceased's grandchildren) in equal shares. If any of the grandchildren die before the deceased, the share that would have gone to them had they been alive when the deceased died is inherited by that grandchild's children (the deceased's great-grandchildren), in equal shares. This continues in the order down to the last of the deceased's descendants (Article 12 of the ZD).

If the deceased's spouse or extra-marital partner or a partner from a civil union does not have the necessary means for sustaining a livelihood and inherits along with other heirs of the first order of inheritance, the court may, at the partner's request, decide that the spouse or extra-marital partner or partner from a civil union is also to inherit a part of that portion of the estate that was, according to the law, to be inherited by the spouse's co-heirs. The spouse or extra-marital partner or partner from a civil union may request an increase in their share of the inheritance against all or individual co-heirs. The court may decide that the spouse or extra-marital partner or partner from a civil union is to inherit the entire estate if the value of that estate is so small that the spouse would suffer hardship were it to be divided (Article 13(1) of the ZD).

If other heirs of the first order of inheritance who do not have the necessary means for sustaining a livelihood inherit along with the deceased's spouse or extra-marital partner or partner from a civil union, the court may, at their request, decide that they are also to inherit a part of that portion of the estate that was, according to the law, to be inherited by the spouse or extra-marital partner or partner from a civil union. All or individual co-heirs may request an increase in their inheritance share to the detriment of the spouse or extra-marital partner or partner from a civil union (Article 13(2) of the ZD).

Individual co-heirs who do not have the necessary means for sustaining a livelihood may also request an increase in their inheritance share to the detriment of other co-heirs (Article 13(3) of the ZD).

The court may decide that all or individual co-heirs are to inherit the entire estate if the value of that estate is so small that they would suffer hardship were it to be divided (Article 13(4) of the ZD).

In deciding on the above requests regarding an increase or reduction in inheritance share, the court pays due regard to all the circumstances of the case, particularly the co-heirs' pecuniary conditions and ability to engage in gainful activity, and the value of the estate (Article 13(5) of the ZD).

Second order of inheritance:

In the second order of inheritance, the estate of a deceased person with no living descendants is inherited by their parents and spouse or extra-marital partner or partner from a civil union. The deceased person's parents inherit equal shares of one half of the estate and their spouse or extra-marital partner or partner from a civil union inherits the other half. If the deceased person has no living spouse or extra-marital partner or partner from a civil union, the deceased's parents inherit equal shares of the entire estate (Article 14 of the ZD).

If either of the deceased's parents pre-decease that person, the portion of the estate that would have gone to that parent had they survived the deceased is inherited, on the basis of per stirpes distribution, by that parent's children (i.e. the deceased's brothers and sisters), that parent's grandchildren and great-grandchildren and further descendants, under the rules applying to cases where children and other descendants inherit the estate of a deceased person (Article 15(1)).

If both the deceased's parents pre-decease that person, that portion of the estate that would have gone to each of them had they outlived the deceased is inherited by their descendants: the father's share by the father's descendants and the mother's share by the mother's descendants. In all cases, the deceased's half-brothers and half-sisters by the father inherit equal shares of the father's portion of the estate, the half-brothers and half-sisters by the mother inherit equal shares of the mother's portion of the estate, while the full brothers and sisters inherit the father's share in equal shares with the half-brothers and half-sisters by the father and the half-brothers and half-sisters by the mother (Article 15(2) and (3) of the ZD).

If either of the deceased's parents pre-decease that person and have left no descendants, that part of the estate that would have passed to that parent had they outlived the deceased is inherited by the other parent. If that other parent also pre-deceases the deceased, that parent's descendants inherit that portion of the estate that would have been inherited by one or the other parent (Article 15 of the ZD). If both parents pre-decease the dead person and neither have left any descendants, the entire estate is inherited by the dead person's surviving spouse or extra-marital partner or partner from a civil union (Articles 16 and 17 of the ZD).

Third order of inheritance:

If there is no person who is in a position to inherit under the first or second orders of inheritance, the third order of inheritance is taken into consideration. Under the third order of inheritance, the estate of a deceased person who has left no descendants or parents, and these descendants and parents have left no descendants or a spouse or extra-marital partner or partner from a civil union, the estate is inherited by the deceased person's grandfathers and

grandmothers. One half of the estate is inherited by the grandfather and grandmother on the father's side and the other half by the grandfather and grandmother on the mother's side (Article 18 of the ZD).
The grandmother and grandfather on the same side inherit equal shares of their portion of the estate. If either of the deceased's ancestors on one side pre-decease that person, that portion of the estate that would have gone to that ancestor had they outlived the deceased is inherited by that ancestor's children, grandchildren and further descendants, under the rules applying to cases where children and other descendants inherit the estate of a deceased person. With regard to everyone else, the rules under which the deceased's parents and their descendants inherit (Article 19 of the ZD) apply to the right of inheritance of a grandfather and grandmother from one side and their descendants.
If the grandfather and grandmother from one side pre-decease the deceased and have left no descendants, that part of the estate that would have passed to them had they outlived the deceased is inherited by the grandfather and grandmother from the other side, and by their children, grandchildren and further descendants, as laid down in Article 19 of the ZD (Article 20 of the ZD).

5 What type of authority is competent:

5.1 in matters of succession?

Matters of probate are regulated by the courts in the Republic of Slovenia, with the court with subject-matter jurisdiction in such matters being the local court (okrajno sodišče).

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

The court as part of a probate hearing.

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

The court as part of a probate hearing.

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

The court as part of a probate hearing.

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)

When a person dies or is declared dead, the registrar responsible for entering the death in the death register sends the death certificate to the probate court within 30 days (Article 179(1) of the ZD).
The procedure commences ex officio when the court receives the death certificate.
If according to the death certificate the deceased person has left no estate, the probate court decides not to hold a probate hearing; the court reaches the same decision if the deceased person has left only movable property and none of the persons entitled to inherit request a hearing (Article 203(1) and (2) of the ZD). In all other cases, the court decides to hold a probate hearing. In the course of probate proceedings, the court establishes who the deceased person's heirs are, which property comprises the estate and which rights from the estate are to be enjoyed by the heirs, legatees and other persons (Article 162 of the ZD).
Probate proceedings are, by their nature, non-litigious proceedings. If any of the facts upon which their rights depend are disputed by the parties, the court suspends the probate hearing and directs the parties towards a civil action or an administrative procedure (Article 210(1) of the ZD).
When the court decides which persons are entitled to the estate, it declares them to be heirs under a decision on inheritance (Article 214(1) of the ZD). The decision on inheritance is delivered to all heirs and legatees, as well as to those persons who have exercised a claim under inheritance in the course of proceedings (Article 215(1) of the ZD).
The court orders the necessary entries to be made in the land registry after the decision on inheritance becomes final.
Any of the heirs may request division of the estate at any time, but not at an inappropriate time. This right may not be subject to a statute of limitations. An agreement whereby an heir renounces their right to request the division of an estate is invalid, as is any provision in a will that prohibits or limits such division (Article 144 of the ZD). The Inheritance Act contains no provisions on how division of an estate is to be implemented; this matter is instead regulated by the Property Code (Stvarnopravni zakonik – SPZ) as part of its provisions on the division of joint property. That is to say, the estate is the joint property of the co-heirs. Co-heirs may determine by agreement how an estate is to be divided. If they are unable to reach agreement, the court decides on the method of division in non-litigious proceedings. If all heirs propose division and the method of division by agreement in the course of probate proceedings, the court makes reference to this agreement in the decision on inheritance (Article 214(3) of the ZD).

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

The Inheritance Act provides that a deceased person's estate passes to the heirs under the act itself (*ipso iure*) at the moment of death (Article 132 of the ZD). The decision on inheritance by which the court announces the heirs following the end of the probate proceedings is therefore of a declaratory nature only.
A legatee also acquires a legacy upon the death unless the legacy is subject to conditions or tied to a specific period of time; in this case, the legatee receives the legacy when that condition has been met or that period of time has passed. The acquisition of a legacy means that the legatee may request that the terms of the legacy be met. The general provisions of the SPZ apply to the passing of the right of ownership to the legatee.

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

Yes. However, this liability is restricted. An heir is liable for the deceased's debts up to the value of the assets bequeathed. If there is more than one heir, they are jointly and severally liable for the deceased's debts, i.e. each up to the value of their respective share of the estate regardless of whether or not division of the estate has already been effected. Regarding the internal ratios of division between the heirs, the debts are covered in proportion to their respective shares of the estate, unless the will determines otherwise (Article 142 of the ZD).
An heir who has renounced his portion of an estate is not liable for the deceased's debts (Article 142(2) of the ZD).

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

The land registry court decides on whether entry can be made on the basis of documents proving the existence of a legal basis for acquisition of the right that is the subject of entry, on condition that the other conditions laid down by the law have been met.
The basis for the entry of real estate that is the subject of inheritance is a legally final decision on inheritance issued in the course of probate proceedings (point 6 of Article 40(1) of the Land Registry Act, ZZK-1). The land registry court orders the entry of an heir's right of ownership in the land registry ex officio and pursuant to a legally final decision on inheritance.

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?

There is no mandatory requirement to appoint an administrator of an estate;

in principle, until an estate is divided it is administered and disposed of by the heirs jointly. An estate may be assigned to the management of a special administrator if the heirs agree. If the heirs cannot reach agreement regarding the administration of an estate, the court appoints an administrator, at the request of any of the heirs, to administer the estate for all the heirs, or determines the portion of the estate which each heir will administer themselves (Article 145 of the ZD).
A testator may appoint in their will one or more persons to act as executors of the will (Article 95(1) of the ZD). Among other things, an executor administers the estate (Article 96(1) of the ZD).

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

A testator may appoint in their will one or more persons to act as executors of the will (Article 95(1) of the ZD). Unless the testator has specified otherwise, the duties of an executor of a will are, in particular, to exercise due care over the estate they are administering, attend to the payment of debts and legacies and, above all, to execute the will in the way that the testator wished (Article 96(1) of the ZD). If no executor of the will has been appointed, the heirs who are administering the estate jointly until it is divided may assign the administration of the estate to a special administrator. If the heirs cannot reach agreement regarding the administration of an estate, the court appoints an administrator, at the request of any of the heirs, to administer the estate for all the heirs, or determines the portion of the estate which each heir will administer themselves (Article 145 of the ZD).

9.3 What powers does an administrator have?

Where a testator has appointed an executor of the will in the will, that will also determine the executor's duties.
Unless the testator has determined otherwise, the following applies under the law (Article 96(1) of the ZD):
that the executor must exercise due care over the estate. In particular, they must attend to any insurance measures, to the inventorising and valuation of the estate (Article 184 of the ZD), and to the retention of specified movable items (Articles 190 and 191 of the ZD);
that the executor must administer the estate, where regular administration also includes the disposal of individual items of the estate. During the period in which they discharge this function, the executor of a will excludes any heir from the administration of the estate and from the disposal of items of the estate;
that the executor must ensure that the testator's debts are settled, and the terms of any legacy met and tasks (burdens) accomplished;
that the executor must ensure in general that the will is executed as the testator wished (see Prof. K. Zupančič, Prof. V. Žnidaršič Skubic, Dedno pravo (Inheritance law), Uradni list 2009, pp. 170–171).
Where there is more than one executor of a will, they discharge the duties entrusted to them jointly, unless the testator has determined otherwise (Article 96 (2) of the ZD). An executor of a will must provide the court with a report on their work, being entitled to a reimbursement of their expenses and to payment for their trouble, which is paid from the available portion of the estate by decision of the court (Article 97 of the ZD).
If no executor of the will has been appointed, the heirs who are administering the estate jointly until it is divided may assign the administration of the estate to a special administrator. If the heirs cannot reach agreement regarding the administration of an estate, the court appoints an administrator, at the request of any of the heirs, to administer the estate for all the heirs, or determines the portion of the estate which each heir will administer themselves (Article 145 of the ZD).

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 court issues a decision on inheritance, which is a court decision on the merits of the case, at the end of the probate proceedings. The decision establishes the scope of the estate, and announces the heirs and legatees, as well as any other persons with an entitlement to a portion of the estate. Under the ZD, the decision on inheritance must include the following components (Article 214(2)):
the surname and first name (as well as any previous surnames) of the deceased person and the name of their father, the deceased person's profession, date of birth and nationality and, for a deceased married woman, her maiden name;
a statement of the real estate, with data from the land registry, and a statement of the movable property with reference to the inventory;
the heir's surname, first name, profession and place of permanent residence, the relationship between the heir and the deceased, whether the heir is inheriting as a legal heir or an heir on the basis of a will and, where there is more than one heir, their respective shares in the estate;
whether the process of determining an heir has been suspended;
whether the right of an heir has been suspended because the appropriate time has not yet arrived or been restricted to a specific time, been suspended because a condition has not been met or is dependent upon a resolutory condition or a task that can be regarded as a resolutory condition, or is restricted by a right of usufruct, and to whose benefit;
the surname, first name, profession and place of permanent residence of persons entitled to a legacy, usufruct or any other right ensuing from the estate, with a precise description of this right.

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Succession - Slovakia

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

Slovak law does not allow agreements on succession or joint wills.
There are several methods for drawing up wills:

1. A will written by the testator's own hand must contain his or her handwritten signature and the date. A will so written does not have to be signed by witnesses.
2. A will drawn up using a different method of writing (such as a computer, a typewriter, or by a person other than the testator) must be signed before two witnesses, who must sign the will to testify that the document is really an expression of the testator's last will. A will so drawn up must also contain the person's handwritten signature and the date.
3. A will in notarised form. The notary is responsible for the content-related and formal particulars of this type of will. Every notarised will must be registered in the Central Notary Register of Wills.
4. A special form of wills is used when the author of the will is in poor medical condition, cannot see or hear, or is unable to read or write. In such cases three witnesses must be present. They testify to the will by their signature after hearing it. The document must specify the person who has written it, the person who has read it aloud, and how it was confirmed that the document contains the testator's true will.
Only persons with legal capacity can be witnesses. Blind, deaf or mute persons, those who have no command of the language in which the will is expressed and the beneficiaries of the will may not be witnesses.
For a will to be valid it must indicate the day, month and year when it was drawn up. Naturally, an important part of the content is the designation of the beneficiaries who will inherit the estate as a whole, or proportional shares thereof, or specific items (who will receive what).
Where the will has been written in the testator's own hand, it is advisable for the testator to tell those close to him or her, so that they know where the will is deposited.
Any conditions attached to the will have no legal implications.

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

Notaries must register ex officio wills drawn up in the form of notarial records in the Central Notary Register of Wills, which is maintained by the Chamber of Notaries. Wills drawn up as described in points (1), (2) and (4) above do not have to be registered, but at the testator's or another person's request they can be accepted by a notary for safekeeping. The notary must also register such safekeeping in the Central Notary Register of Wills.

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

Yes, Section 479 of Act No 40/1964, the Civil Code (*Občiansky zákonník*) specifies the reserved shares of the estate and the beneficiaries entitled to them (who are referred to as 'forced heir', *neopomenuteľný dedič*): 'Minor descendants must receive at least as much as constitutes their share of the estate under the law and descendants of age must receive at least as much as one half of their share under the law. Where a will contradicts the above, the relevant part of the will is void, unless the specified descendants have been disinherited.'

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

Succession passes by operation of the law, by a will, or by both of these mechanisms. If the deceased has not drawn up a will or if assets exist that have not been included in the will, succession passes by operation of the law on the basis of classes of beneficiaries.
1st class
In the first class, the deceased's children and spouse are the beneficiaries in equal proportions. If a child does not inherit, that child's portion is distributed to this child's children in equal proportions. If even those children, or any of them, do not inherit, then their descendants inherit in equal proportions.
If the deceased has not left any descendants or his or her descendants do not inherit (i.e. all of them have refused succession, or none of them is capable of inheriting, or all of them have been validly disinherited or are not taken into consideration), the 2nd class of beneficiaries comes into play.
2nd class
If the deceased's descendants do not inherit, the beneficiaries in the second class include the spouse, the deceased's parents, and also anyone who lived with the deceased in a common household for at least one year before his or her death and who for that reason took care of the common household, or was dependent on the deceased for maintenance. Beneficiaries in the second class inherit in equal proportions; however, the spouse must always receive at least one half of the estate.
3rd class
If neither the spouse nor any of the parents inherit, the beneficiaries in the third class, inheriting in equal proportions, include the deceased's siblings and anyone who lived with the deceased in a common household for at least one year before his or her death and who for that reason took care of the common household, or was dependent on the deceased for maintenance. If any of the deceased's siblings does not inherit, the sibling's children receive the sibling's portion in equal proportions.
4th class
If no beneficiary inherits in the third class, the fourth class comprises the deceased's grandparents, who inherit in equal proportions, and if none of the grandparents inherits, the grandparents' children in equal proportions.
Where there is no beneficiary, the estate passes to the State by default.

5 What type of authority is competent:

5.1 in matters of succession?

The district court within whose jurisdiction the deceased had permanent residence at the time of death, or if the deceased did not have permanent residence in Slovakia, in whose jurisdiction the deceased had assets, and if there is no such court, then the court for where the deceased died. The district court appoints a notary to act and decide in the case. Acts by the notary are considered acts by the court. This authorisation does not extend to a decision to open succession proceedings, nor to an application for the provision of legal assistance abroad, nor to a decision to dismiss the notary and the notary's staff, nor to a decision to overturn the decision on succession if it is subsequently found that the deceased is still living or that the declaration of the deceased's death has been retracted.

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

Beneficiaries make an oral declaration of acceptance or waiver of succession before the notary, or a written declaration that they send to the probate court within one month of the day when they were notified by the court of their right to waive/accept the succession and of the implications of the declaration.

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

Slovak law does not provide for legacies.

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

There is no special declaration of waiver or acceptance of a reserved share. The procedure is analogous to the declaration of acceptance/waiver of succession, but the one-month time limit is not applicable.

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 Registry Office notifies the competent district court of a death in its registry district. The court starts proceedings, even on its own motion, once it learns that somebody has died or has been declared dead. In the first place, the court checks in the Central Notary Register of Wills whether or not the deceased

has left a will, a deed of disinheritance, a revocation of either of these two acts, or a statement on the choice of national law in accordance with separate legislation, and identifies the notary with whom the documents are deposited. The court carries out a preliminary investigation to identify the beneficiaries and the deceased's estate and debts, and takes any urgent measures needed to secure the succession. There is no need to order a hearing to consider the succession if the court confirms that a single beneficiary receives the estate or if the estate passes to the State by default.

If succession is not contested, as the authorised court commissioner the notary issues an order on succession in the following cases:

a single beneficiary receives the estate;

the estate passes to the State by default;

the beneficiaries have agreed with each other on distribution; any creditor of the deceased is also party to this agreement if the creditor's claim is part of the settlement;

the beneficiaries and the deceased's creditors have made an agreement to pass on excessively indebted estate for payment of the debts;

if the parties cannot reach an agreement, the notary confirms the share of the estate for each beneficiary or distributes the estate to the beneficiaries and decides what each beneficiary will receive;

the notary does not approve the agreement on the distribution of the estate and confirms the share of the estate for each beneficiary or distributes the estate to the beneficiaries and decides what each beneficiary will receive.

A final succession order is a document that effects the passage of title to the beneficiaries.

If the decision on succession rights depends on ascertaining disputed facts, and if conciliation fails, the court orders the beneficiary whose right seems less probable to bring an action for the determination of the disputed facts. The court also sets a time limit for bringing the action, which may not be shorter than one month.

Where the estate is excessively indebted and the beneficiaries and the deceased's creditors fail to reach an agreement to pass on the estate for payment of the debts, the court can order the winding-up of the estate. In the winding-up order, the court requests the creditors to notify it of their claims within a specified period; otherwise, the claims are forfeited.

The court (the notary as the court commissioner) winds up excessively indebted estates by selling all of the deceased's assets at the price customary for comparable property. In selling the assets, the court commissioner acts for the parties in his own name but takes into account any more advantageous suggestions by the parties for asset realisation. The notary deposits the proceeds from liquidation in a bank account that the notary has opened for this purpose. If some assets are left over, they pass to the State with effect from the day of the deceased's death.

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

Succession passes on the death of the deceased. The succession order or the court's order has only a declaratory effect regarding a fact that occurred in the past. However, it is only possible to dispose of the estate to the full extent with a final succession order or a court order.

The day of the deceased's death must be evidenced by a death certificate, a notification of death issued by a special registry of the Slovak Ministry of the Interior when a Slovak citizen dies abroad, or a court decision delivered in proceedings to declare a person dead in the case of missing persons, where the date of death is declared by the court. Only Slovak courts can declare Slovak citizens to be dead. Slovak courts can declare foreign nationals to be dead, but the legal implications only apply to persons permanently living in Slovakia and only to property situated in Slovakia.

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

Yes, beneficiaries are liable for the deceased's debts and for reasonable costs related to the deceased's funeral, but only up to the value of the estate passing to them. Beneficiaries are not obliged to pay the deceased's debts using their own assets. If there are several beneficiaries, they are responsible for the deceased's funeral and debts in accordance with the proportion that each received relative to the estate as whole. If the estate is excessively indebted, the beneficiaries may agree with the creditors to cede the estate to pay the debts. The court approves this agreement provided it is not in breach of the law or the accepted principles of morality.

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

The district authority where the immovable property is located is competent to register it in the land register. The district authority registers it on its own motion or in response to an application filed by the owner or another authorised person. An application for registration must be filed in writing and must include:

(a) the applicant's name (business name) and permanent residence (registered office);

(b) the name of the district authority to which the application is addressed;

(c) an authentic instrument or other document confirming the title to the immovable property;

(d) a list of annexes. The annexes to an application for registration are:

(i) an authentic instrument or other document confirming the title to the immovable property; if this concerns registering a lien established by the operation of law, a document confirming the existence of the claim need not be attached;

(ii) the identity of the plot, if the title to the immovable property is not recorded in the certificate of title;

(iii) other documents having evidentiary value for the proceedings.

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. However, if required in the general interest or major interest of the parties, the court takes urgent measures on its own motion to secure the estate and can also appoint an administrator. Most frequently, one of the beneficiaries or another person close to the deceased is the administrator, but it can also be a notary other than the court commissioner in the succession proceedings in question.

An administrator appointed under Slovak law differs from the administrator under common law.

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

The notary appointed as the court commissioner executes the will. Beneficiaries manage the estate acquired by succession, but they need the court's permission for disposal of items included in the estate before the succession proceedings are closed, and for other acts beyond everyday management.

9.3 What powers does an administrator have?

During the succession proceedings the administrator takes any action needed to preserve the assets making up the estate within the limits determined by the court. The court determines the scope of his or her authorisation with a view to enabling the administrator to preserve the value of assets making up the estate. The administrator is liable for any damage he or she causes by a breach of the duties specified by law or the court. At the end of the succession proceedings he or she submits a final report to the beneficiaries and the court decides on his or her fee plus reimbursement of costs, which are payable by the beneficiary receiving the estate.

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?

At the end of the succession proceedings the notary issues a succession order, which is deemed to be a court order. The certificate contains the names of the beneficiaries and identifies the assets passing to each beneficiary and the portions of the estate.
At a beneficiary's request, the notary can issue a Certificate of the Group of Beneficiaries during the succession proceedings. This is a 'confirmation of facts known from the file', an authentic instrument issued by the notary conducting the succession, mainly for purposes of evidencing the status of a beneficiary or other entitled person to whom a right of the deceased is to pass (e.g. compensation under an insurance policy, membership rights, positions in pending proceedings, etc.).

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Succession - Finland

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?

Inheritance matters are regulated by the Code of Inheritance (40/1965). The only way to provide for what happens to the estate after death is to make a will. A will must be made in writing and in the simultaneous presence of two witnesses. The testator must sign the will when it is made, or acknowledge his/her previous signature thereto. The witnesses must attest the will by signing it once the testator has signed it or acknowledged his/her signature on it. A verbal will may also be binding in certain exceptional cases.
It is also possible to make a reciprocal will, which in most cases is a will drawn up by spouses to transfer a right of ownership between themselves. Reciprocal wills are subject to the same formal requirements as other wills. The rules that apply to reciprocal wills between spouses also apply to reciprocal wills made between the partners in a registered partnership.

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

The authorities in Finland do not maintain a register of wills.

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

The freedom to make bequests is limited, for the benefit of the deceased person's direct descendants and spouse. Direct descendants and adopted children, as well as their own descendants, are entitled to a legal share of the deceased person's estate. The legal share amounts to half the value of the share of the estate devolving to that heir in accordance with the statutory order of succession.
A spouse also enjoys protection from a will made by the first deceased spouse. The surviving spouse may keep the deceased spouse's undivided estate, subject either to an application by a direct descendant for distribution of the estate or to a will made by the testator. The surviving spouse may always, however, retain undivided possession of the spouses' common home, as well as the usual household effects, unless the surviving spouse owns residential property that is suitable as a home.

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

The primary legal heirs are the direct descendants, each of whom will receive an equal portion of the estate. If a child has died, any descendants of that child will inherit in his/her place, and each branch of the family will receive an equal portion.
If the deceased person was married and is not survived by any direct descendants, the surviving spouse will primarily inherit the deceased spouse's estate. Registered partners are entitled to inherit under the same conditions as spouses.
If the deceased person is not survived by any direct descendants and was not married at the time of death, the deceased person's father and mother will each receive half of the estate. If the deceased person's father or mother has died, that share will be divided among the deceased person's brothers and sisters. If a brother or sister has died, that brother's or sister's descendants will take his or her place, and each branch of the family will receive an equal share. If there are no brothers or sisters, or descendants thereof, but either of the deceased person's parents is alive, that parent will receive the entire estate. If none of the above-mentioned heirs have survived the deceased person, the parents of the deceased person's father and mother will receive the whole estate. If the deceased person's paternal grandfather, paternal grandmother, maternal grandfather or maternal grandmother has died, the share of the estate that would have gone to that grandparent will go to his/her children. Cousins do not have the right of inheritance.

5 What type of authority is competent:

5.1 in matters of succession?

Various authorities have jurisdiction over matters relating to the administration of succession. The estate inventory (*perukirja*), a list of the deceased person's assets and liabilities, must be sent to the tax office of the deceased person's domicile within one month of being drawn up. Confirmation of the list of beneficiaries may also be sought from the Digital and Population Services Data Agency or, in the Province of Åland, from the State Department of Åland. The State Treasury is the central authority for matters relating to the acquisition of property by the State. The district court (*käräjäoikeus*) of the deceased person's domicile has jurisdiction to hear any cases relating to the estate.

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

Succession may be accepted by actually taking charge of the inherited property. Heirs may also make a separate acceptance declaration. If the estate has been divided up, the acceptance declaration should be made to the other heirs who have accepted succession. If the estate has not been distributed, the declaration should be made to the estate administrator. The declaration may also be presented to a court.
There is no prescribed format for waiver declarations, but any such declaration must be made in writing. A waiver declaration may be made for any person or persons having a share in the deceased person's estate, the estate administrator, the estate distributor, the executor of the will, or any descendants taking the place of deceased heirs. In order for the waiver to have legal effect against seizure by creditors, the heir should either notify the deceased person's estate of his or her waiver, or deposit the waiver declaration with the Digital and Population Services Data Agency or, in the Province of Åland, with the State Department of Åland, so that it can be duly entered in the records (Section 81 of Chapter 4 of the Enforcement Code).

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

There is no prescribed format for reporting one's intentions with regard to the beneficiaries of a will. A declaration of acceptance, made by the beneficiary to the estate administrator or distributor, will be regarded as acceptance of a bequest, as will any concrete action by the beneficiary relating to the property in question. Notifying the heirs of the bequest is sufficient indication that the beneficiary wishes to assert his/her rights on the basis of the will.
Any declaration waiving a bequest must be made in writing. In order for such waiver to have legal effect against seizure by creditors, the beneficiary must either notify the waiver in writing to the estate or deposit the waiver declaration with the Digital and Population Services Data Agency or, in the Province of Åland, with the State Department of Åland, so that it can be duly entered in the records (Section 81 of Chapter 4 of the Enforcement Code).

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

The heir must declare his/her demand for his/her legal share to the beneficiary of the will by means of a process server, or in another verifiable manner, within six months of having been notified of the bequest. A demand for the legal share may also be made by announcing it in an official journal published within the period set out above, if such demand was not notified to the beneficiary on the grounds that he/she could be assumed to have been avoiding service of process concerning the demand or if his/her address is unknown.

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)

In Finland, the authorities do not institute proceedings relating to succession cases on their own initiative. Following the death of an individual, the estate inventory is drawn up first. The estate inventory is a document that clarifies the status of the deceased person's estate; in other words it lists the deceased person's assets and liabilities. The people who have a share in the deceased person's estate are noted in the estate inventory, together with the surviving spouse's assets and liabilities and the joint assets and liabilities of the two spouses. The estate inventory must be drawn up within three months of death, but the tax office may extend the deadline if there are special reasons for doing so.
The obligation to draw up the estate inventory lies with the heir who has taken charge of the estate and who is responsible for managing its property, or with the estate administrator or executor of the will, if any. That person must select two trustees to draw up the estate inventory. A report on the deceased person's family tree records must be attached to the estate inventory. In Finland, population records are kept in both church and public population registers, and official extracts from the register may be ordered either from the Digital and Population Services Data Agency or, in the Province of Åland, from the State Department of Åland, or from the parishes where the deceased person was registered. The estate inventory must be sent to the Finnish Tax Administration (*Verohallinto*) within one month of having been drawn up.
When a person who has made a will dies, beneficiaries must notify the will to the heirs, by means of a process server or in another verifiable manner, and must supply them with a true copy of the will. If an heir wishes to contest the will, he/she must lodge a complaint within six months of having been notified of the will.
Distribution of the estate may only begin once it has been wound up. Winding up an estate involves determining the extent of property in the estate, fulfilling the obligations of the deceased person and his/her estate with regard to any debts, and asserting the rights of any particular legatees. For the purposes of winding up the estate, the beneficiaries will manage the estate jointly unless special provision has been made for management. Instead of this joint management, the beneficiaries may apply to the court for the appointment of an estate administrator. Once management of the estate has been handed over to the administrator, the beneficiaries will no longer be entitled to make decisions concerning the estate. The duty of the estate administrator is to carry out all measures necessary for winding up the estate. Once the estate has been wound up, the administrator should notify the beneficiaries and prepare a report.
Once the estate has been wound up, any beneficiary may request distribution. If the deceased person was married or in a registered partnership, the property must be partitioned before it can be distributed to the heirs. The beneficiaries may agree among themselves on how to distribute the estate. A distribution report must be drawn up, and it must be signed by the beneficiaries and certified true and correct by two impartial witnesses.
The beneficiaries may also apply for a court order appointing an estate distributor. This usually happens when the beneficiaries cannot agree on the distribution. The estate administrator or executor will serve as the distributor, provided that he/she is not a beneficiary and if the beneficiaries ask him/her to distribute the estate and no other estate distributor has been appointed.
The estate distributor must stipulate the time and place where the estate will be distributed, and must verifiably invite the beneficiaries to attend. The estate distributor must endeavour to ensure that the beneficiaries agree on the distribution. If agreement is reached, the estate must be distributed accordingly. If there is no agreement, the estate distributor must distribute the estate so that each beneficiary receives a share of the various types of assets that make up the estate. If the estate cannot be distributed in any other way, the court may order, on the basis of the estate distributor's proposal, that the distributor sell certain items or, where necessary, all of the property constituting the estate. The estate distributor will prepare and sign a distribution report (*perinnönjakokirja*). Any beneficiary may contest the distribution by bringing proceedings against the other beneficiaries within six months of distribution.

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

An heir (*perillinen*) is a person who had a family, marital or adoptive relationship with the deceased, as defined by law. A legatee (*testamentinsaaja*) may be either a natural person or a legal person.
To qualify as an heir or legatee, the person in question must have been alive at the time of death of the deceased person. This may include a child conceived prior to the death of the deceased person and subsequently born alive.
An heir or beneficiary who wishes to assert his/her rights should accept succession or notify any claims to the person or persons who have accepted succession. If the estate has not been distributed, the claim must be submitted to the estate administrator or to a court. An heir or legatee is considered to have accepted succession or, if he/she has taken charge of the estate, either alone or with another person, participated in preparing the estate inventory or distribution, or taken any other action in relation to the property in question.

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

Beneficiaries are not individually liable for the deceased person's debts. A beneficiary responsible for drawing up the estate inventory will only be individually liable for the deceased person's debts if he/she fails to submit the inventory by the deadline.
The debts of the deceased person and the estate will be settled from the estate's assets. The beneficiaries will, however, be individually liable for any debts contracted by them on behalf of the estate.

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

The documents required for registering immovable property will vary, depending on whether the property in question was obtained by succession or by bequest. Applications for the registration of ownership on the basis of succession must include the estate inventory, distribution report, the deceased person's genealogical records, any partition report and any documents relating to the transfer of inherited property. The applicant must also prove that the distribution has taken legal effect by enclosing with the application either an acceptance document signed by all beneficiaries or a legally valid certificate issued by the court with jurisdiction for the deceased person's domicile.

Applications for the registration of ownership on the basis of a bequest must include the estate inventory, the deceased person's genealogical records, the original will, a certificate to the effect that the will is legally valid, and evidence that the will has been notified to all heirs. If the list of beneficiaries needs to be certified as true and correct by the Digital and Population Services Data Agency or the State Department of Åland, no genealogical records need to be enclosed with the application.

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?

It is not mandatory to apply for an administrator. If a court receives an application for the appointment of an administrator, the court must appoint an administrator to manage the estate. The application may be submitted by any heir or legatee or by the executor. The estate's assets may also be transferred to the estate administrator upon application by a creditor of the estate or of the deceased person, or by a person liable for the deceased person's debts.

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

The beneficiaries manage the estate's assets jointly, unless special provision has been made for administration of the estate. The beneficiaries may also agree to manage the estate jointly and to leave it undivided until further notice or for a specified period of time.

A deceased person's estate may be transferred to the estate administrator by court decision. Should this happen, joint management by the beneficiaries will end and they will cease to have the right to make decisions concerning the estate even unanimously.

A particular individual may be nominated to manage the estate as executor in the deceased person's will. It is the executor's task to ensure that the estate is wound up and to execute the will. The executor will handle business that would otherwise have been the responsibility of the beneficiaries or the estate administrator. The nomination of an executor does not preclude the appointment of an estate administrator. If an executor is named in the will, he/she will also be appointed administrator unless there are valid grounds for not doing so.

9.3 What powers does an administrator have?

Joint administration of the estate requires unanimity except in certain special cases. In joint administration, the beneficiaries represent the estate in dealings with third parties and in court cases relating to the estate. Actions which cannot be delayed may, however, be undertaken even if the consent of all the beneficiaries cannot be obtained. The beneficiaries may also appoint an estate manager.

When appointing an estate administrator, the court will issue him or her with an instrument of appointment, specifying the estate to which the appointment relates. The administrator's powers only cover the specified estate. After the estate has been transferred to the administrator, he or she represents the estate in dealings with third parties and in court cases relating to the estate. The administrator must take any action necessary to wind up the estate. The administrator must consult the beneficiaries on certain matters of importance to them. Even in such cases, however, the administrator may act without having obtained the consent of the beneficiaries.

The scope of the executor's powers during the winding-up process depends on the will. Unless otherwise specified in the will, the executor will have the same powers as an estate administrator.

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 documents issued at the end of succession proceedings and proving the status and rights of the beneficiaries are the estate inventory and the distribution report.

The estate inventory must specify the beneficiaries, the deceased person's assets and liabilities, the beneficiaries and the surviving spouse (even if he or she is not a beneficiary).

The distribution report forms the basis for distributing the estate. It is not, however, an enforceable title in the sense that it could be used as a basis for initiating enforcement proceedings or as for transferring possession of an asset. Any enforcement measures will require a separate final court judgment.

The concept of a document's formal probative force is not recognised in Finland.

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Succession - Sweden

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?

Anyone who is 18 years old or older is entitled to draw up a will. A will is not valid if it has been drawn up under the influence of mental illness. To be valid, a will must be drawn up in writing and signed by the testator. The will must also be witnessed and signed by two witnesses at the same time. The witnesses need to know that it is a will that they are witnessing, but they do not need to know the content of the will.
The two witnesses must be over 15 years old and may not be a spouse, a cohabiting partner, a sibling or a direct relative or have an affinity with the testator. A person who themselves or whose spouse, cohabiting partner, sibling, direct relative or someone who has affinity with them, is left inheritance in the will may not be a witness either.
It is possible for a testator to draw up a privileged will (*nödstestamente*) if the testator is prevented from drawing up a will in the manner described above due to an illness or other emergency. The will can then be made verbally in front of two witnesses, or handwritten and signed by the testator.
If a party wishes to nullify a will, they must file a protest action against the will in court. They must file this action within six months of receiving the will.
The disposition of the estate is only valid in accordance with the regulations for wills. Succession agreements or other agreements for the transfer of property after death are therefore not valid.

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

There are no rules for registering wills in Sweden.
To make sure that there is a will and that it can be used after the death of the testator, he or she should tell someone whom they trust where the will is kept. It is common for wills to be kept at a lawyer's office or a bank. If the will cannot be found after the death of the testator, the succession stipulated by law is followed. The estate can be redistributed if the will is found at a later date. There is a limitation period of ten years.

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

Yes, if a person is married and/or has children, there are restrictions on the right to dispose of their estate.
If the testator was married, the surviving spouse is entitled to receive property that, together with what the surviving spouse received at the division of their joint estate or that constitutes the spouse's separate property, corresponds to four price base amounts pursuant to Chapter 2 Sections 6 and 7 of the Social Insurance Code (2014: SEK 44 400 x 4 = SEK 177 600) (the base amount rule). This right is valid as far as the estate is of a sufficient value. This means that if there is no property of such a value, the surviving spouse inherits all the property that exists. Wills that restrict this right will not be valid in this respect.
Children and grandchildren of the deceased (known as *bröstarvingar,* 'heirs of the body') are entitled to a statutory minimum portion of the inheritance. The statutory portion (*laglott*) is half of the share that is due by law to the children and grandchildren where there is no will, to which the children and grandchildren have equal rights. Wills that restrict the statutory portion are to that extent invalid. A child or grandchild can claim their statutory portion by requesting adjustment of the will within six months of receiving the will.

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

If there is no special disposition of the estate, the inheritance is distributed in accordance with the succession established by law. One requirement for the entitlement to an inheritance is that the person must be alive at the time of the deceased's death. Even someone who had been conceived by the time of the death and is born afterwards is entitled to inheritance.
The law distinguishes three classes of heirs. The first class comprises the children or grandchildren of the deceased. The second class comprises the deceased's parents and siblings, while the third class comprises the deceased's grandparents and their children, i.e. the deceased's parent's siblings. The inheritance is distributed equally within each class. The second class does not inherit if there is someone alive in the first class. The third class inherits if there is no-one alive in the first or the second class.
If the deceased was married, the estate goes to the surviving spouse. After the death of the surviving spouse, the children or grandchildren inherit jointly; and if there are no children or grandchildren to inherit, the second or third class of heirs inherit. These heirs thus inherit by secondary inheritance (*efterarv*) after the death of the surviving spouse.
If the deceased has children who are not the children of the surviving spouse, they are entitled to receive their statutory portion upon the deceased's death.
If there are no heirs, the estate goes to the Inheritance Fund (*den allmänna arvsfonden*).

5 What type of authority is competent:

5.1 in matters of succession?

The distribution of the inheritance is mostly carried out without the involvement of the authorities. Instead it is the parties who are entitled to the inheritance, the joint owners of the deceased's estate, who together distribute the estate after the death. The parties to the estate are the surviving spouse or cohabiting partner, heirs and universal legatees. Three months after the death, an inventory of the estate must be submitted to the Tax Agency (*Skatteverket*). This estate inventory reports the assets and debts of the deceased's estate. The estate inventory also shows which people are authorised to represent the estate. The Tax Agency is also the competent authority to search for an heir whose whereabouts are unknown by posting an announcement in *Post- och Inrikes Tidningar*.
If any of the parties to the estate so requests, the court can order that the property be assigned for administration by an official estate administrator (*boutredningsman*) and also appoint one. If the parties cannot agree on the distribution of the estate, a special estate distributor (*skiftesman*) will be appointed. This person can compel the distribution of an estate. The estate distributor is appointed by an ordinary court of competent jurisdiction.
Inheritance disputes are also resolved by an ordinary court of competent jurisdiction.
If any of the parties to the estate are under age or legally incompetent, a trustee will be appointed. A trustee (*god man*) is appointed by the chief guardian (*överförmyndaren*).

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

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

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

A special acceptance of an heir's right to an inheritance is not required. However, he or she will have to make themselves known and if they are a party to the estate, they must help administer the estate.
If a person is entitled to inheritance through a will, they must, if they wish to assert their right, give notice of the will to those who are heirs by law. This means that an attested copy of the will is handed to and receipt is confirmed by the heir(s). After notice of the will, any heirs who believe that the will should be declared null and void, heirs who wish to have the will adjusted in order to receive their statutory portion, or a surviving spouse who wishes to invoke the base amount rule have six months to file a protest action in court.
It is possible for a child or grandchild of the deceased to waive their right to inheritance in favour of the surviving spouse. This is not relinquishing their inheritance; instead the heir is postponing their right to inheritance. The heir will be entitled to the secondary inheritance from the surviving spouse's estate and when the surviving spouse dies, the heir will receive his/her minimum portion. Should the heir not be alive at the death of the surviving spouse, the heir's own heirs will receive the inheritance in his/her place.
An heir or legatee can waive their right to inheritance by so informing the person leaving the property before his/her death. Such a waiver applies, unless otherwise specified, to the heir's own heirs. However, a child or grandchild or their heirs are always entitled to receive their statutory portion.

If an heir or legatee withdraws or does not claim their inheritance, the Tax Agency can direct him or her to assert their right within six months of such direction being given to him or her. If the heir or legatee does not assert their right, they will lose their entitlement to the inheritance. It is possible for a person to waive their right to inheritance up until the moment the estate is distributed.

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)

When a person dies, the parties to the estate, i.e. a surviving spouse or cohabiting partner and any heirs or universal legatees, must jointly administer the deceased's property. They are responsible for drawing up the estate inventory (*bouppteckning*) and submitting it to the Tax Agency. If the assets exceed the debts, the surplus amount will be distributed as stipulated by law or as set out in the will. The estate is divided through an estate distribution document (*arvskifte*), which is drawn up by the heirs and universal legatees. The estate distribution document must be in writing and signed by the heirs. If the heirs cannot agree on the distribution, an estate distributor (*skiftesman*) may be appointed and a compulsory distribution may be carried out. If an executor (*testamentsexekutor*) was appointed in the will, the executor will be responsible for the distribution.

If the deceased was married or cohabiting, a division of the couple's joint estate will normally be carried out. The division of the joint estate will take place before the distribution of the deceased's estate.

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

A person becomes an heir (*arvinge*) by law. To be an heir, the person must be alive at the time the testator dies. Alternatively, they must have been conceived before the death and born afterwards. There are three different inheritance classes for people who are entitled to inheritance; for more information, refer to question 4.

A person becomes a legatee (*testamentstagare*) if they are bequeathed property in a valid will. If the legatee is not alive when the testator dies, their place is taken by relatives of the legatee who are entitled to inherit in accordance with the succession laid down by law.

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

No, the heirs are not liable for the debts of the deceased. When a person dies, their assets and liabilities go into an estate (*dödsbo*). The estate is a legal person in its own right and therefore has its own rights and obligations. If the debts exceed the assets, the estate goes into bankruptcy and no distribution of the inheritance is carried out.

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

Anyone who has acquired immovable property with ownership rights must apply for the acquisition to be registered (registration of title) at the National Land Survey(https://www.lantmateriet.se/), normally within three months of the acquisition. A person who applies for the registration of title must submit the document of acquisition and the other documents that are necessary to support the acquisition. This means, for example, in the event of a purchase, the purchase document, among other things, must be submitted. If the property is acquired through inheritance, it is in some cases sufficient (if there is only one party to the estate) in principle for the registered estate inventory to be submitted in an original and an authenticated copy. In other cases, the estate distribution document must be submitted in an original and authenticated copy. Other documents may also need to be submitted, for example, the consent of the chief guardian if there is a person who is under age or legally incompetent who is party to the estate. In some cases a person can apply for the registration of title by submitting a will that has acquired legal effect, instead of the estate distribution document.

The person who last applied for the registration of title is considered to be the property's owner.

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?

It is obligatory to appoint an official estate administrator if a party to the estate requests one to be appointed. A legatee, someone who has been bequeathed specific property through the will, is entitled to request an official estate administrator. The estate administrator is appointed by a court of competent jurisdiction. The estate administrator must have the knowledge required to administer the estate.

A testator may provide in their will that an executor will look after the administration of the estate instead of the heirs and universal legatees.

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

Firstly, it is the parties to the estate; i.e. the surviving spouse or cohabiting partner, heirs and universal legatees. The people who are parties to the estate must be listed in the estate inventory. If an official estate administrator or an executor of the will has been appointed, they are authorised to represent the estate instead of the parties to the estate.

9.3 What powers does an administrator have?

An official estate administrator is tasked with analysing the assets and debts of the estate and administering the property. It must also be established which heirs or legatees there are in order to then distribute the estate in accordance with the legal succession or the will. The estate administrator is therefore authorised to sign the legal documents that are necessary for this. There are some limitations to the authority of the estate administrator, e.g. when selling immovable property the estate administrator must have the written consent of all the joint owners or, if this cannot be obtained, the permission of a competent district court.

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 most common documents are the estate inventory and the estate distribution document.

Estate inventory (*bouppteckning*): Following the estate inventory proceedings, to which all heirs and legatees must be invited, an estate inventory is drawn up which must be submitted to the Tax Agency. The inventory shows, among other things, who the heirs and legatees are, and the assets and debts of the estate. The person who best knows the estate, the presenter of the estate inventory, must solemnly certify that the information contained in the estate inventory is correct. Two people must certify that everything has been correctly noted down in the estate inventory. The will and premarital settlement must be enclosed with the estate inventory. The Tax Agency registers the estate inventory. A registered estate inventory is important in civil law. This document, by itself or with the estate distribution documents, can be produced by the parties to the estate as evidence of title, for example, when the money from the deceased's bank account(s) needs to be withdrawn and when an application to register the title of a property has to be made.

Estate distribution *document* (*arvsskifte*): When distributing the estate, an estate distribution document must be drawn up. The estate distribution document must be drawn up in writing and signed by the heir and/or legatees. The estate distribution document is also important in civil law and is can be produced by the parties to the estate as evidence of title.

Swedish law applies the free assessment of evidence, which means that there are no special provisions on what evidential value a specific document has.

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Succession - England and Wales

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

The disposition of property is drawn up by the testator or testators. There is no requirement for legal advice or the involvement of a legal practitioner.

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

There is no requirement to register the will.

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

No, but specified family members and persons maintained by the deceased may apply to the court for an award of financial provision from the estate under the Inheritance (Provision for Family and Dependants) Act 1975.

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

A valid will vests the estate of the deceased in the executors (personal representatives) of the deceased on death. It does not dispose of the property to the beneficiaries.

If or to the extent that the deceased does not leave a valid will the estate will be distributed in accordance with the intestacy rules specified in the Administration of Estates Act 1925 (as amended).

5 What type of authority is competent:

5.1 in matters of succession?

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

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

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

The estate of the deceased vests in the personal representatives of the deceased, who can receive declarations of waiver or acceptance. They may apply to the court for a grant of representation (probate in the case of a will and letters of administration in case of intestacy). The grant will confirm their authority to deal with the estate in accordance with the will or intestacy rules as the case may be. Disputes as to entitlement to succession or the grant can be referred to the court. Proceedings in the court are governed by the Non-Contentious Probate Rules or the Civil Procedure Rules.

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 personal representatives are responsible for identifying and collecting the assets of the deceased in the estate, paying the debts of the deceased (including inheritance tax) and distributing the residue to the beneficiaries in accordance with the will or the intestacy rules.

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

A testator can specify the beneficiaries who will inherit the estate by making a valid will. In the absence of a valid will the beneficiaries are determined by the intestacy rules. The beneficiaries become entitled to inherit on the death of the deceased or, in the case of beneficiaries entitled by virtue of the death of a beneficiary during the administration of the estate, the death of the person previously entitled.

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

No. The estate of the deceased is liable.

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

As mentioned in the answer to question 5, the estate of the deceased vests in the personal representatives of the deceased. The personal representatives will transfer immoveable property to the beneficiary entitled in the course of the administration of the estate. The beneficiary will present evidence of the grant of representation and the transfer to the Land Registry in accordance with the relevant Land Registration Rules.

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?

See the answer to question 9.

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

See the answer to question 9.

9.3 What powers does an administrator have?

See the answer to question 9.

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 personal representatives administer the estate and distribute the net assets. The form of the transfer of the assets will depend on the nature of the assets. Some goods may be delivered by possession. Money may be paid by cheque. See question 9 regarding land.

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Succession - Northern Ireland

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

The disposition of property upon death may be undertaken by process of law (i.e. where there is no will) or in accordance with a will. There is no requirement to draft a will. However, if a will is drafted, it can be drafted by the testator with or without assistance of a legal practitioner. There is no requirement for legal advice or the involvement of a legal practitioner.

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

There is no requirement to register the will. However, the High Court in Northern Ireland will, for a fee, store a will.

The will vests the estate of the deceased in the executors (personal representatives) of the deceased on death. It does not dispose of the property.

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

Yes, there may be restrictions attaching to the property. For example, if property is held as Joint Tenants, it will pass automatically to the surviving Joint Tenant(s) (this process is called survivorship).

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

If or to the extent that the deceased does not leave a valid will the estate will be distributed in accordance with the intestacy rules specified in the Administration of Estates Act (Northern Ireland) 1955 (as amended).

5 What type of authority is competent:

5.1 in matters of succession?

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

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

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

The estate of the deceased vests in the personal representatives of the deceased. They may apply to the court for a grant of representation (probate in the case of a will and letters of administration in case of intestacy). The grant will confirm their authority to deal with the estate in accordance with the will or intestacy rules as the case may be. Disputes as to entitlement to succession or the grant can be referred to the court. Proceedings in the court are governed by the County Court Rules (NI) 1981 and the Rules of the Court of Judicature (NI) 1980.

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 personal representatives are responsible for identifying and collecting the assets of the deceased in the estate, paying the debts of the deceased (including inheritance tax) and distributing the residue to the beneficiaries in accordance with the will or the intestacy rules.

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

On the death of the deceased or, in the case of beneficiaries who die during the administration of the estate, the death of the person previously entitled.

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

No. The estate of the deceased is liable.

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

The personal representatives will transfer immovable property to the beneficiary entitled in the course of the administration of the estate. The beneficiary may have to present evidence of the grant of representation and the transfer to the Land Registry or the Registry of Deeds in accordance with the Land Registration Rules (Northern Ireland) 1994 or the Registration of Deeds Regulations (Northern Ireland) 1997.

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?

See the answer to question 9.

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

See the answer to question 9.

9.3 What powers does an administrator have?

See the answer to question 9.

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 personal representatives administer the estate and distribute the net assets. The form of the transfer of the assets will depend on the nature of the assets. Some goods may be delivered by possession. Money may be paid by cheque. See question 9 regarding land.

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Succession - Scotland

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

A person can leave property on death to another by making a bequest in a will. The Requirements of the Writing (Scotland) Act 1995 requires wills made after 1 August 1995 to be in writing and signed by the granter.

Individuals may also hold moveable and immoveable property with the title in joint names and to the survivor (this is commonly referred to as a survivorship clause).

Individuals may also hold moveable and immoveable property with the title in their own name or with others, with a special destination clause of that person's property or share therein, in favour of another in the event of death.

Where there is no will, survivorship clause or special destination in place, property will pass in terms of the Succession (Scotland) Act 1964.

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

There is no requirement to register a will in Scotland.

Title to immoveable property including titles with a special destination or a survivorship clause will be registered in either the Register of Sasines or the Land Register of Scotland.

In some instances, title to moveable property, including those with a special destination or survivorship clause will be registered, for instance in a company's Shareholder Register.

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

Under Scots law, it is possible for a child or surviving spouse/civil partner to claim legal rights from moveable estate on the death of a parent/spouse/civil partner even where the deceased left a will. Legal rights are a protection from disinheritance. Children have a right to share one third of the deceased's moveable estate (money, shares etc) if there is a surviving spouse or civil partner or one half if there is no surviving spouse or civil partner. A surviving spouse/civil partner has a right to one third of the deceased's moveable estate (money, shares etc) if there are children or one half if there are none.

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

Property will pass under the Succession (Scotland) Act 1964 in the order set out below.

(a) PRIOR RIGHTS

A widow, widower or surviving civil partner (the survivor) has prior rights in his or her late spouse or civil partner's estate.

If the person who died owned a house, and the survivor lived there, he or she is entitled to the house and the furnishings and furniture of that house, subject to certain limits. The survivor can claim:

the house, as long as its value is less than £473000

the furnishings and furniture up to the value of £29000.

If the person who died left children or descendants, the survivor is entitled to the first £50000 out of the estate. If the person left no children or descendants, the survivor is entitled to the first £89000.

(b) LEGAL RIGHTS

If any estate remains after 'prior rights' have been met, a surviving spouse or civil partner and children are entitled to certain "legal rights" from the "moveable estate" of the person who died as set out in answer to 3 above

(c) FREE ESTATE

After the prior and legal rights have been satisfied, the rest of the intestate estate "devolves" according to legal rules, in the following order

Children

If parents and siblings survive, parents inherit half and brothers and sisters inherit half

Brothers and sisters, if no parents survive

Parents, if no brothers and sisters survive

Surviving spouse or civil partner

Uncles or aunts (on either parent's side)

Grandparents (on either parent's side)

Brothers and sisters of grandparents (on either parent's side)

Other ancestors – more remote than grandparents

The Crown

5 What type of authority is competent:

5.1 in matters of succession?

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

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

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

In most estates, it is necessary for an executor (either named in a deceased's will or appointed by the sheriff court) to obtain 'confirmation' from the sheriff court. The grant of confirmation is the executor's title to administer the estate outlined in the inventory of estate which accompanies the application for confirmation - and also gives the executor authority to deal with all succession related matters in connection with that estate.

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)

In most estates it is necessary to have an executor to administer an estate appointed either under a will or by the sheriff court (an executor dative) in circumstances where there is no valid will or if the named executors are unable or unwilling to act.

in most estates, the executor(s) must apply to the sheriff court for confirmation.

An executor dative, except where the estate is not subject to the small estate procedure and in certain other limited circumstances, will be required to obtain indemnity insurance (bond of caution) before beginning to administer an estate.

An Inventory listing all items of the estate together with the will, if there is one, must be submitted with the application for confirmation.

The court grants confirmation in relation to the items of estate in the inventory and that is the executor's authority to ingather those items.

Once the estate is ingathered, the executor must then pay any debts and tax due before distributing the estate in terms of the will or the Succession (Scotland) Act 1964.

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

Where there is a will, it will name the beneficiaries or class of beneficiaries who should inherit part or all of the estate subject to any claim for legal rights.

Where there is no will, the rights and order of who will inherit the estate is set out in the Succession (Scotland) Act 1964.

Where there is no will a surviving cohabitant may also apply to the court within six months of the death for an award from the estate under the Family Law (Scotland) Act 2006.

'Vesting' is the point at which a beneficiary acquires 'a right of property' in respect of a legacy. Under the Succession (Scotland)1964 Act, the estate vests in the executor for the purposes of the administration. At this point, the beneficiary acquires a personal right against the executor for delivery of the subject of the legacy in his/her favour. When the subject of the legacy is delivered to the beneficiary, he or she acquires a 'real right'.

The timing of vesting is a matter of what the deceased intended determined by reference to his or her will.

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

The executor will be liable to pay all debts due by the estate before distributing the estate to beneficiaries. The estate should not be distributed until six months from date of death to allow creditors time to make a claim. If a creditor does not make a claim within 6 months and the executor distributes the estate, the beneficiaries are in theory liable for any debts to the extent of their legacy.

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

The title of immoveable property can be transferred to a beneficiary by means of a disposition which should be registered in the Land Register for Scotland, or by attaching a signed document (docket) to the confirmation (or to a certificate of confirmation).

If there is a survivorship clause, the title of the property automatically passes to the surviving owner and an extract of the death certificate should be placed with the title deeds.

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?

Not all estates require the confirmation from the court – some fundholders will pay out without the need for confirmation. If confirmation is required, an executor must be appointed, either named in a will or by an application for appointment of an executor dative by the court.

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

An executor appointed, either under a will or by the court, who is granted confirmation by the court will administer the estate. However, in some cases, fundholders will transfer the deceased's estate without the need for confirmation.

9.3 What powers does an administrator have?

To ingather the estate identified in the inventory in the application for confirmation.

To pay debts and taxes.

To distribute the remaining estate to beneficiaries under the will or, where there is no will, under the Succession (Scotland) Act 1964.

To pursue debts due to the deceased.

If a deceased has sustained personal injuries before his or her death, that person's executor has like rights to damages as the deceased.

The executor has the right to continue an action for damages for personal injury which was raised by the deceased before death and which has not concluded.

If an action for damages for defamation has been raised by the deceased and not concluded at the time of death, the right to damages can be transmitted to the executor.

If the deceased had a right to damages for breach of contract, that can be the subject of an action continued or raised by the executor.

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?

There are no documents required to be issued proving the status and rights of beneficiaries. Items of estate will be transferred to the beneficiaries by the executor administering the estate and for some this will involve a formal transfer, and possibly registration, of title. As noted above, if there is a survivorship clause, the title of the property automatically passes to the surviving owner and an extract of the death certificate should be placed with the title deeds. An inheritance tax form will have to be submitted as part of the confirmation process in Scotland, even if no Inheritance Tax is due.

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Succession - Gibraltar

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

The disposition of property is drawn up by the testator or testators. There is no requirement for legal advice or the involvement of a legal practitioner.

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

There is no requirement to register the will.

The will vests the estate of the deceased in the executors (personal representatives) of the deceased on death. It does not dispose of the property.

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

No.

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

If or to the extent that the deceased does not leave a valid will the estate will be distributed in accordance with the intestacy rules specified in the Administration of Estates Act 1933 (as amended).

5 What type of authority is competent:

5.1 in matters of succession?

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

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

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

The estate of the deceased vests in the personal representatives of the deceased. They may apply to the court for a grant of representation (probate in the case of a will and letters of administration in case of intestacy). The grant will confirm their authority to deal with the estate in accordance with the will or intestacy rules as the case may be. Disputes as to entitlement to succession or the grant can be referred to the court. Proceedings in the court are governed by the Non-Contentious Probate Rules or the Civil Procedure Rules.

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 personal representatives are responsible for identifying and collecting the assets of the deceased in the estate, paying the debts of the deceased and distributing the residue to the beneficiaries in accordance with the will or the intestacy rules.

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

On the death of the deceased or, in the case of beneficiaries who die during the administration of the estate, the death of the person previously entitled.

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

No. The estate of the deceased is liable.

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

The personal representatives will transfer immoveable property to the beneficiary entitled in the course of the administration of the estate. The beneficiary will present evidence of the grant of representation and the transfer to the Land Registry in accordance with the Gibraltar Land Titles Act 2011.

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?

See the answer to question 9.

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

See the answer to question 9.

9.3 What powers does an administrator have?

See the answer to question 9.

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 personal representatives administer the estate and distribute the net assets. The form of the transfer of the assets will depend on the nature of the assets. Some goods may be delivered by possession. Money may be paid by cheque. See question 9 regarding land.

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