International Succession in Switzerland

BÄR & KARRER

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This article has been published by Tina Wüstemann in International Succession, Third Edition (2010), edited by Louis Garb/John Wood, chapter Switzerland, pages 685-699.

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A BRIEF SURVEY OF THE LOCAL SYSTEM

1 Type of System

Switzerland is a civil law country. The legislation in the field of civil law falls into the competence of the Confederation. The law of inheritance is part of Swiss civil law and thus unified in Switzerland. Swiss inheritance law is promulgated by Arts 457 to 640 of the Swiss Civil Code (CC) and applies to Swiss domestic inheritance cases and to international cases governed by Swiss substantive law.

2 Testamentary Dispositions

Swiss law basically provides for two instruments to dispose of assets upon death: wills and inheritance contracts. Any other way in which a testator/trix might seek to dispose of their assets on death (e.g. mutual will) is not sanctioned under Swiss law. Where a will is not made in the proper form, it is voidable (see Section A11). Severe formal deficiencies may result in the will being void (e.g. typewritten will).

2.1 Wills

The holographic will is the most common form of will (Art. 505 CC). It must be hand-written by the testator/trix from beginning to end, dated and signed. The date must include the year, month and day of the execution of the will. Later additions to the will must also be dated, signed and made by hand.

Public wills are made in the presence of two witnesses before a notary public or other official qualified for this purpose by cantonal law (Arts 499-504 CC). A public will is usually made where there is doubt as to the testator/trix's capacity, to evidence the existence of a last will or if the testator/trix's handwriting is bad.

In exceptional circumstances, such as imminent danger of death, which prevent the testator/trix from making his or her will in any other form, a will may be established in oral form in front of two witnesses (Art. 506 CC).

2.2 Revocation of Wills

A testator/trix may either revoke a will by destroying the document (Art. 510 CC), by declaring it invalid using one of the forms required for the drafting of wills (Art. 509 CC) or by making a

subsequent will. Where a testator/trix makes a new will without expressly revoking an earlier one, it is presumed by law that the later shall supersede the earlier one unless the later will clearly purports to be a supplementary disposition only (Art. 511(1) CC).

The marriage of the testator/trix does not revoke a will made prior to the marriage. However, marriage has an impact upon the testator/trix's testamentary freedom to the extent that the spouse is entitled to a compulsory portion of the estate. The testator/trix's spouse may have a claim for reduction in relation to testamentary dispositions in the will made prior to the marriage (see Section A4).

Divorced spouses are no longer statutory heirs and upon the final divorce judgment they lose any benefits resulting from testamentary dispositions made prior to the filing of divorce proceedings (Art. 120(2) CC).

Where a last will, which revoked an earlier one, is subsequently declared invalid, the former will automatically revives. The same holds true where the testator/trix's revocation of a last will is subsequently revoked by them in one of the forms required for the drafting of wills, indicating their intention to revive the former will.

Pursuant to the Federal Law on Registered Partnerships of Same Sex Couples, same-sex couples can have their partnership registered with the competent cantonal authority. With such registration, the surviving partner has the same statutory share of inheritance as a spouse and is also entitled to a compulsory portion (Art. 471(3) CC). The statutory inheritance right of the registered partner ceases with the dissolution of the partnership by final court judgment and any testamentary dispositions made prior to the initiation of such dissolution proceedings are deemed revoked.

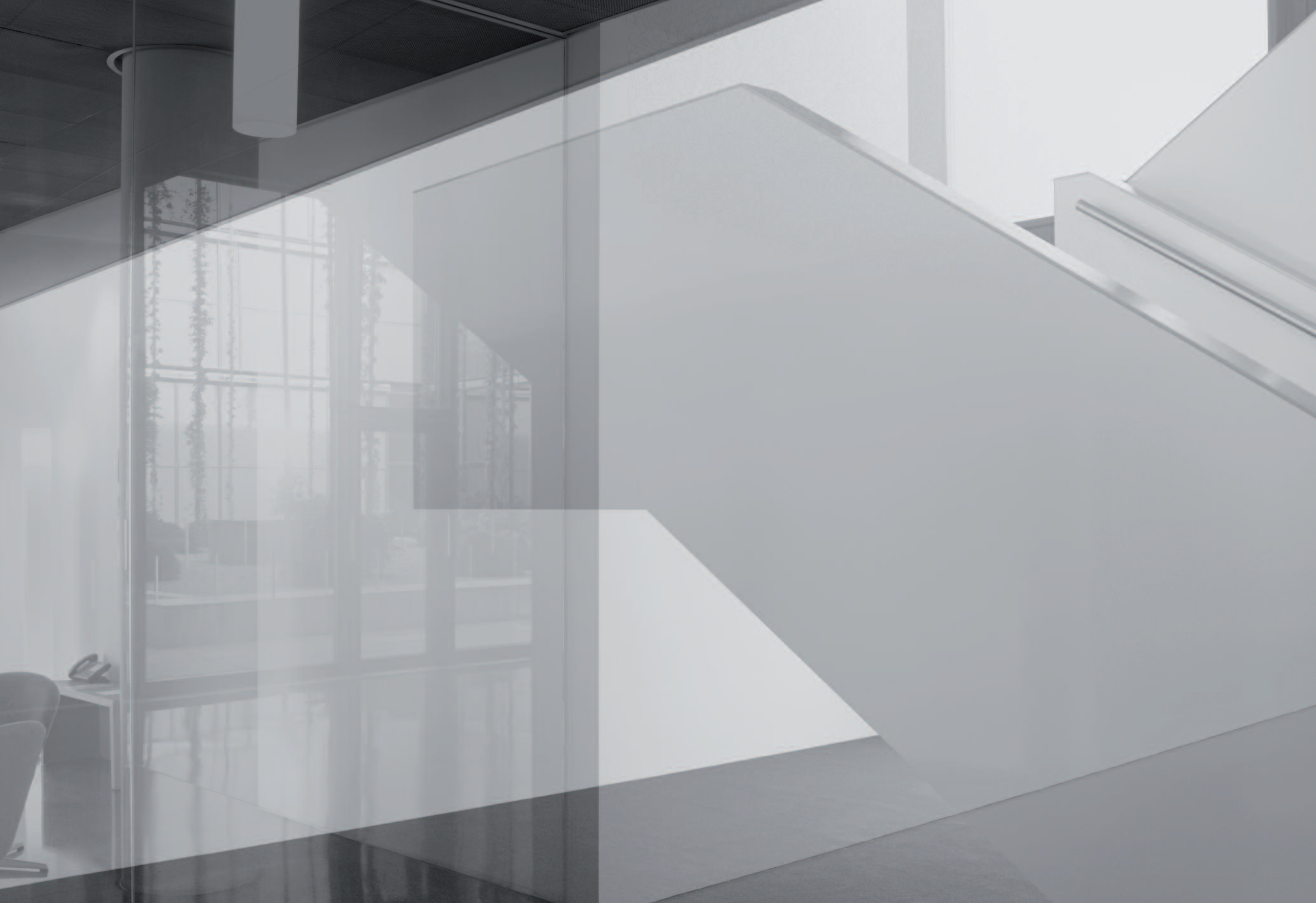
2.3 Other Issues in Connection to Wills

Under Swiss law, testamentary dispositions are considered to be strictly personal acts of the testator/trix and they can therefore only be made by the testator/trix and not by a third party. For example, the identity of the beneficiaries or the content of a legacy must be explicitly stated by the testator/trix in the testamentary instrument and the testator/trix may not leave such decisions to an heir, an executor or a third party.

Foreign trusts are recognized in Switzerland and, where applicable, Swiss courts will apply foreign trust law when adjudicating trust disputes.[1] While a testator/trix may create a foundation by last will or inheritance contract (Art. 81(1) CC)[2], according to the prevailing doctrine, they may not create a testamentary trust under Swiss law. However, where a foreigner with last domicile in Switzerland has subjected their estate to the law of their citizenship (see Section B2), a trust may be set up by will if the governing foreign law so permits. While Swiss law allows in principle the funding of an *inter vivos* trust by will, the compulsory portions of the statutory heirs of the settlor must be respected.

1 The Hague Convention on the Law Applicable to Trusts and on their Recognition became effective in Switzerland on 1 July 2007.

2 Article 335 CC allows family foundations in Switzerland only to a limited extent, i.e. for educational purposes or the financial support of individual family members in need, but not to maintain a whole family over generations. However, the Federal Tribunal decided in 2009 (BGer 4A_339/2009 v. 17.11.2009, E. 4.3) that Art. 335 para. 2 CC is not a *loi d'application immédiate* and hence, is not an obstacle for the recognition of foreign family maintenance foundations. The same applies with regard to the set up and recognition of a foreign trust for example by a Swiss resident settlor (see Prof. Dominique Jakob/Peter Picht, Der Trust in der Schweizer Nachlassplanung und Vermögensgestaltung, AJP 7/2010, p. 855).



The testator/trix may keep a holographic will, deposit the document with a third party (such as a bank or notary) or hand it over for safekeeping to a special authority designated by cantonal law. A public will or inheritance contract must be deposited at the office of either the notary or public official before whom the document was made, or at the office designated for such purpose by cantonal law (Art. 504 CC).

3 Intestacy

Articles 457 to 466 CC provide detailed rules applicable in cases of intestate succession. Absent a valid disposition on death, the estate of a deceased passes to the statutory heirs.[3]

The nearest heirs of a deceased are their descendants who take part *per capita*. Predeceased children are represented by their descendants who take part *per stirpes* in all degrees of descent (Art. 457 CC). An adopted child takes as an heir from the adopting parents like a legitimate child, the former biological child/parent relationship is dissolved (Art. 267 CC). In case of a parent-child relationship in the sense of Art. 252 CC, a child out of wedlock and their parent have a reciprocal right of inheritance. If the testator/trix leaves no descendants, the inheritance passes to their parents and their descendants (Art. 458 CC) and if they have predeceased them, the right of inheritance passes to the grandparents and their descendants (Art. 459 CC). The right of inheritance based on relationship ceases with the *stirps* of the grandparents (Art. 460 CC).

The surviving spouse is a statutory heir who takes different shares in the estate, depending with whom he or she shares the inheritance: it is one-half where shared with descendants, three quarters where shared with the heirs of the parental *stirps*, and the whole inheritance where there are no heirs of the parental *stirps* (Art. 462 CC). Under Swiss law, the surviving spouse may first be entitled to a share in the matrimonial property (see Section A6).

If there are no statutory heirs, the estate passes to the canton of the deceased's last domicile or to the municipality designated by such canton's legislation (Art. 466 CC).

There is no difference in the division of the estate between movables and immovables.[4]

3 A person may either have a right to succeed on the death of another person or their estate or part of it by law or under a disposition on death. Where this right of succession is given to them by law, they are a 'statutory heir'; where it is given by a disposition on death, they are called an 'instituted heir'.

4 Particular regulations apply with respect to farming land as promulgated in the BGBB (*Bundesgesetz über das Bäuerliche Bodenrecht*).

4 Freedom of Testation

4.1 Forced Heirship Rules

A testator/trix is only free to dispose of their estate up to the so-called 'devisable portion', as Swiss forced heirship law gives certain individuals closely related to the testator/trix an entitlement to a share in the estate, the so-called 'compulsory portion' (except where a testator/trix has the right to deprive an heir of their compulsory portion for committing a serious offence against the testator/trix or a person closely connected with the testator/trix or for serious failure of duties upon an heir imposed by family law towards the testator/trix or their family (Art. 477 CC).) The compulsory portion is calculated as a fraction of the intestacy share in the inheritance and is as follows (Art. 471 CC):

- three-quarters of the statutory share of the inheritance for a descendant;
- one-half of the statutory share of the inheritance for the surviving spouse and the registered partner;
- one-half of the statutory share of inheritance for each of the parents if a testator/trix leaves no descendants.

No other persons are entitled to a compulsory share. To give an example: the two sons of a deceased who share the estate with the surviving spouse are granted a fraction of three eighths (or each three-sixteenths) (three-quarters of one-half), while the surviving spouse is granted one-quarter (one-half of one-half) of the inheritance, leaving a devisable portion of three-eighths. An heir entitled to a compulsory portion has the right to receive the full amount of such share outright and the testator/trix may not impose a charge on the compulsory portion. (As to the testator/trix's right to leave the surviving spouse the usufruct over the whole share of the estate devolving to their common children, see Section A5.)

Whether in a particular case forced heirship rights have been honoured depends on the value of what the testator/trix has left to their heirs both *inter vivos* and on death. The compulsory shares and devisable portion are calculated based on the value of the estate at the death of the testator/trix (Art. 474 CC). For calculation purposes, certain *inter vivos* gifts made by the deceased (e.g. gifts made five years preceding the donor's death) are included in the estate (Arts 475 and 527 CC).

4.2 Action for Reduction

Dispositions in violation of forced heirship rights are neither per se invalid nor do they lead to the application of Swiss intestacy rules, but they may give grounds for an action for reduction (Art. 522(1) CC). An action for reduction is only available to the extent that the compulsory portion is not satisfied (by both dispositions received *inter vivos* and on death). Article 532 CC provides that reductions are made in the first place of testamentary dispositions and then of gifts *inter vivos*, beginning with the latest in time and continuing in that order until the compulsory portions are fully restored. This means that the later a bequest, the earlier it is in the order of those subject to reduction. As a second rule, if several dispositions have been made simultaneously, they are reduced proportionally, unless the testator/trix has ordered differently (Art. 525(1) CC). The action for reduction must be brought within one year from the time when the heirs had cognizance of the infringement of their rights, and in any case not later than 10 years from the opening of the will in respect of testamentary dispositions, and from the death of the donor in respect of other gifts. The claim for a reduction can always be pleaded as a defence to an action (Art. 533 CC).

4.3 Binding Contracts

Contracts made between two or more heirs or between an heir and a third person with regard to a succession of a living person are valid under Swiss law if made in writing and with the testator/trix's consent (Art. 636 CC).

Swiss law provides for inheritance contracts by which the testator/trix binds him or herself to leave the inheritance or a bequest to their contracting party or to a third person (Art. 494(1) CC). An heir of the testator/trix may also enter into an inheritance contract with the testator/trix to renounce all or part of their rights of inheritance in the estate of the testator/trix with or without consideration (Art. 495 CC). An inheritance contract is valid if the formalities required by a public will have been observed and if the contracting parties sign the contract simultaneously before a notary or other competent official and two witnesses (Arts 499 and 512 CC). Formation, content and revocation of an inheritance contract depend on the assent of all parties involved. An inheritance contract may be rescinded at any time by the parties by an agreement in writing (Art. 513(1) CC).

4.4 Directions Concerning Division of Estate

A testator/trix may give directions about the division of their estate. The concept of so-called advance distribution is also known under Swiss law, i.e. a testator/trix may make lifetime gifts to an heir on account of future inheritance (see Section A8).

5 Maintenance and Usufruct for the Surviving Spouse

A surviving spouse (or registered partner) is entitled by law to claim ownership or the usufruct in the family home on account of their share of inheritance (Art. 612a CC). Moreover, a testator/trix may leave the surviving spouse (but not the registered partner) – if they would have to share with common descendants based on forced heirship – by will the usufruct in the entire estate. Alternatively, a testator/trix may exempt the devisable portion of one-quarter of the estate from usufruct and devote it by will to the surviving spouse or any third party (Art. 473(2) CC). On the death of the surviving spouse, the common descendants obtain the unencumbered ownership of all estate assets previously subject to usufruct.

Article 631(2) CC grants disabled children and children that have not yet completed their education a claim to receive an adequate advance payment from the estate.

6 Matrimonial Property Regime between Husband and Wife

Swiss law provides for three different marital property regimes from which the spouses may choose:[5] the ordinary statutory matrimonial property regime of *participation of acquisitions* (Arts 196 to 220 CC), the *community of property* (Arts 221 to 246 CC) and *separation of property* (Arts 247 to 251 CC). Absent a specific choice by the spouses of a marital property regime by way of matrimonial property agreement in the form of a public deed, the ordinary regime of participation of acquisitions applies. Under the regimes of participation of acquisitions and community of property, as a principle, each spouse participates in one-half of the other spouse's acquisition[6] (Art. 215 CC), respectively common

5 International aspects of matrimonial property law and in particular the applicable law in a specific case are dealt with in Arts 51 to 58 of the Federal Statute on Private International Law (PIL), which will not be examined herein.

6 Mainly income from work and revenues from own property (i.e. which belonged to the spouses at the beginning of the marriage or was inherited and/or received by gratuitous transfer) (Art. 197 CC).

property[7] (Art. 241(1) CC). By way of matrimonial property agreement, the spouses can deviate from this general rule. The compulsory portion of the (non-common) descendants must, however, be respected (Arts 216(2) and 241(3) CC). Under the regime of separation of property, there is no acquisition or common property that must be divided in the first place, i.e. all of the deceased's assets form part of the estate.

Under the regime of community of property, spouses need either to act jointly or with the consent of the other spouse to validly dispose of common property (e.g. vesting common property with a trust; Art. 228 CC). While under the regime of participation in acquisitions, each spouse is entitled to administer and dispose of their assets individually during marriage, donations of acquisition property that have been made without the consent of the other spouse within the last five years before the dissolution of the marital property regime as well as dispositions over assets that have been made in order to curtail the entitlement of the other spouse are added to the acquisition (Art. 208 CC).

7 Joint Property

The doctrine of joint tenancy, as known in common law, where the surviving joint tenant acquires the rights of the deceased by operation of law, is not known under Swiss law. There are, however, similar concepts such as the joint account with a so-called survivorship clause, where, based on a specific contractual arrangement with the bank, the heirs of the deceased account holder are vis à vis the bank not regarded as the legal successors of the deceased with respect to that account but the surviving joint account holder takes all. Such arrangements are, however, subject to statutory inheritance rights of the heirs of the deceased account holder, respectively a claim for reduction if they infringe upon compulsory portions of statutory heirs (see Section A4.1 et seq.).

8 Gifts (*Inter Vivos*)

Whether gifts during lifetime have to be set off against an heir's inheritance can be decided by the deceased. If the deceased decides to favour one of the heirs over the others, such gift will - subject to a claim for reduction in case of violation of compulsory portions - not be taken into account in the calculation of that heir's share (Art. 629(1) CC). As regards lifetime gifts to descendants, it is presumed by law that the deceased intended to treat them equally and such gifts must be set off against the descendant's inheritance (unless provided otherwise by the deceased). The presumption

7 Everything that is not a spouse's own property unless otherwise defined in their matrimonial property agreement (Arts 222(1) CC and 225 CC).

does not apply for certain classes of gifts such as payments for education, dowry and customary presents. For statutory heirs other than descendants[8] (e.g. spouse), the law presumes that the deceased wanted to favour such heir by making a lifetime gift and hence they do not have to account for them unless stipulated otherwise by the deceased, but in any case, such gifts may be subject to a claim for reduction in the case of violation of compulsory portions.

The donor has the right to exclude, demand or limit the extent to which gifts must be taken into account in an heir's inheritance; but, in any case, such gifts may be subject to a claim for reduction in the case of violation of compulsory portions.

9 Capacity

A testator/trix has testamentary capacity to make a will or enter into an inheritance contract if they have (a) mental capacity; and (b) if they are at least 18 years old (Art. 467 CC).

Witnesses must be of full age and have mental capacity. Persons who cannot read or write as well as certain relatives of the testator/trix, their spouses and the testator/trix's wife/husband cannot act as witnesses (Art. 503 CC). Neither the witnesses nor their relatives, siblings or spouses can be beneficiaries under the will.

Individuals (including minors), as well as corporate bodies can take as an heir or otherwise benefit under a will or an inheritance contract. An unborn child is, as from the date of conception, capable of inheriting provided it is born alive (Art. 544 CC). The testator/trix can leave the whole or part of the estate to an heir who is not born at the time of the death of the testator/trix if it is left to them as a so-called reversionary heir or legatee (Art. 545 CC).[9]

10 Authority (Court, Notarial or Other)

The competent probate authority may be a judge, a notary or other official authority empowered for such purpose, depending on the legislation of the canton involved.

A person who is in possession of a last will must deliver it to the competent probate authority at the last domicile of the deceased, even if the last will appears to be invalid (Art. 556(1) CC). One month

8 In principle, instituted heirs (see fn. 4) do not have to account for lifetime gifts unless the testator/trix provides otherwise.

9 According to Art. 488 CC, a testator/trix can in their will or an inheritance contract charge the instituted heir or a legatee to pass on the inheritance or legacy to another as so-called reversionary heir or reversionary legatee. The obligation to deliver the inheritance to a third part may not again be imposed on a reversionary heir.

after notification of the will to the heirs and legatees, the instituted heirs (whose claims have not been contested) can request the issuance of a so-called 'certificate of heirs' from the probate authority. The statutory heirs are also entitled to ask for such certificate (e.g. in case of intestate succession). While this certificate allows the heirs listed in the certificate *vis à vis* third parties (such as banks, real estate registrars, etc.) to jointly take possession of estate assets, it does not definitively decide on the status as heir, as persons with a better right can still raise an action to void the will (Art. 519 CC) or claim the inheritance (Art. 598 CC). In the Canton of Zurich, the court fees for the notification of the will, respectively the issuance of the certificate of inheritance, are currently between CHF 100 and CHF 7,000 (depending on the net value of the estate and the court expenses).

Statutory heirs, instituted heirs and beneficiaries under an earlier will are entitled to oppose the issuance of the certificate of heirs by filing an opposition. The law does not fix a time limit within which such opposition has to be declared. As the certificate of heirs is issued at the earliest one month after notification of the will (Art. 559 CC), the time limit for the opposition is at least one month.

11 Invalidity of Will

Grounds for invalidity of a will or inheritance contract are: lack of proper form (Art. 520 CC), incapacity of the testator/trix if a will or inheritance contract was made under undue influence, where a testamentary disposition is illegal or immoral or subject to an illegal or immoral condition (Art. 519 CC).

Grounds for invalidity of the will do not render a will *ipso iure* void (except in cases of severe deficiencies) but result in the will being only voidable. Any heir or beneficiary who is an interested party may initiate an action to void a will or an inheritance contract within one year from the date the plaintiff had cognizance of the dispositions on death and of the ground for nullity, and in any case not later than 10 years from the date of the opening of the will (Art. 521(1) CC). The possible grounds to invalidate a will can always be pleaded as a defence to an action (Art. 521(3) CC).

The onus of proof is upon the claimant, i.e. the person challenging the validity of the will or inheritance contract.

12 Simultaneous Death

An heir must survive the deceased to inherit from a testator/trix (Art. 542 CC). When several persons die and it is not possible to establish if one survived the other, their deaths are presumed to have occurred at the same time (Art. 32(2) CC) and hence they cannot inherit from each other.

13 Presumption of Death

A person who claims to be an heir or legatee of the testator/trix must prove the death of the deceased (Art. 32(1) CC). This is generally proven with an extract from the death register. Such proof is not required if a person has been officially declared absent. In such a case, the estate is released to the heirs in accordance with intestate rules or the dispositions of a last will subject to the provision of security to guarantee the potential restitution of the estate to persons with a better right or should the person declared absent return (Art. 546 CC).

14 Estate Taxes

Inheritance taxes in Switzerland are in the full discretion of each canton; the Confederation does not levy any inheritance tax. Apart from the Canton of Schwyz, all other 25 cantons raise inheritance tax. In some cantons the communities levy supplementary taxes. Most cantons levy an inheritance tax, which means that heirs and legatees are taxed on their share of inheritance. The Canton of Grisons is the only canton that levies a tax on the whole undivided estate itself. The Canton of Solothurn applies both methods. The applicable tax rates usually depend upon the relationship between the heirs and the deceased, as well as the value of the assets transferred: they vary in general from 0% up to 40%. Taxes on inheritance from a person who is unrelated can even exceed 50%. Almost all cantons exempt spouses, children and even grandchildren from taxation.

In all Swiss cantons, fiscal matters relating to succession are linked to the domicile of the deceased as regards movables and to location as regards immovables. Real estate located abroad is not taken into account. The estate of a deceased with last domicile abroad is subject to the respective foreign taxation legislation (except Swiss real estate).

Generally speaking, there are no other taxes resulting from the transfer of assets to the heirs. Inherited assets will be subject to ordinary net wealth taxes on the level of the respective heir. In some cantons, however, an heir or legatee inheriting a real estate will have to pay so-called real estate taxes.

15 Administration of Estates

Whether instituted or statutory, inheritance is vested as a whole (i.e. including all assets and liabilities

of the testator/trix) in heirs by operation of law at the death of the deceased (Art. 560(1) CC). Where there are several heirs, all rights and obligations comprised in the inheritance constitute an undivided community among the heirs until partition. Heirs are joint owners of all estate property and may deal with it jointly, subject to the rights of representation and administration conferred by agreement[10] or by law (Art. 602 CC). Where an executor has been appointed by a testator/trix, they are exclusively competent to administer the estate. The probate authority at the place of the last domicile of the deceased may, under certain circumstances, appoint an official administrator (Art. 554 CC).

There is no statutory requirement to draw up a report if the heirs themselves administer the estate. While an executor must report only to the heirs, an official administrator must also report to the authority that appointed him.

Except where an official administrator has been appointed or in cases of a public inventory or official liquidation of the estate (Art. 580 *et seq.* CC), authorities do not intervene in the administration of the estate (unless a complaint is filed: see below). An executor, official administrator or liquidator is, however, under the supervision of the authorities as designated under cantonal law.

Any heir, legatee or creditor of the estate may challenge the manner in which the executor or official administrator administers the estate by filing a complaint with the competent cantonal authority.

The community of heirs may obtain possession of the estate's assets and dispose of the assets based on the certificate of heirs (see Section A10). Where an executor has been appointed, it is in the exclusive competence of the executor to take possession of and administer the estate based on a so-called certificate of executorship issued by the competent probate authority. The legatees have a right to claim delivery of their legacies from either the heirs or the executor (Art. 562 CC).

Creditors of the estate are paid out of the estate. Heirs are jointly and severally liable for the debts of the deceased with their entire property until five years after partition (Art. 639 CC).

Where no executor has been appointed by the testator/trix, partition of the estate is a matter for the heirs. At all times, each heir has the right to demand the partition of the estate unless they are expressly bound by agreement or by law to continue the community (Art. 604(1) CC). A written partition contract between heirs prevails over directions of a testator/trix in their will. If the heirs cannot reach an agreement as regards the division of the estate, the probate authority at the last domicile of the deceased is competent to do so, taking into consideration local usage, the personal situation of the heirs and the wishes of the majority of the heirs (Art. 611(2) CC).

10 Where there is no executor appointed by a testator/trix, heirs may nominate a co-heir to act as their representative or have the competent probate authority designate an agent to represent the community of heirs until partition (Art. 602(3) CC).

16 Domicile/Nationality

The above applies to Swiss domestic inheritance cases and to international cases governed by Swiss substantive law (see Section B).

The authorities at the last domicile of the deceased are competent to deal with estate matters, regardless of the whereabouts of the assets (Art. 28 *Zivilprozessordnung*).

B APPLICABLE LAW/PROCEDURE WHERE FOREIGN ELEMENTS ARE INVOLVED

The following section does not refer to multi- or bilateral treaties between Switzerland and other states but is limited to the general conflict of law rules as promulgated in the Federal Statute on Private International Law (PIL) of 18 December 1987.

1 Jurisdiction

As a general rule, the Swiss authorities at the last domicile of the deceased have jurisdiction over probate matters and inheritance disputes in relation to the worldwide estate (Art. 86(1) PIL) with the exception of real estate, where a foreign state claims exclusive jurisdiction (Art. 86(2) PIL). Swiss authorities at the place of citizenship of the deceased have jurisdiction where a Swiss national who died domiciled abroad, by will or inheritance contract, subjected their assets in Switzerland or their entire estate to the jurisdiction of the Swiss courts or to Swiss law (Art. 87(2) PIL). Article 86(2) PIL also applies in such case. Moreover, Swiss authorities at the place of citizenship of the deceased are competent to deal with the estate of a Swiss citizen who died domiciled abroad to the extent the foreign authority does not deal with such estate (for factual or legal reasons: Art. 87(1) PIL). Finally, where a deceased was last domiciled abroad and leaves assets in Switzerland, Swiss authorities at the place of the assets have jurisdiction to the extent the foreign authority does not deal with them (Art. 88 PIL).

2 Applicable Law

The PIL determines the law applicable to an estate to the extent the Swiss authorities have jurisdiction (see Section B1). A distinction is made between the *lex successionis* and the law applicable to the administration of the estate (Art. 92 PIL). The *lex successionis* governs in particular issues such as the size of the estate, intestate succession, the vesting of the estate and the remedies available for the heirs and legatees. The law applicable to the administration governs mainly procedural aspects. The problem of differentiation arises where the Swiss authorities have jurisdiction and a foreign *lex successionis* applies.

Where a person dies with last domicile in Switzerland, his worldwide estate is governed by Swiss inheritance law (Art. 90(1) PIL) unless a foreign state claims exclusive jurisdiction in relation to real estate (*lex rei sitae*). Where a person dies with last domicile abroad and Swiss authorities have jurisdiction (see Section B1), the estate is governed by the law determined by the conflict of law rules of the foreign state (Art. 91(1) PIL). The meaning of this *renvoi* is debated in Switzerland. According to the prevailing view, in such a case, a Swiss judge should apply the same law that a foreign judge would apply if they were deciding the case (foreign court theory). Where Swiss authorities are competent to deal with the estate of a Swiss national with last domicile abroad, the estate is governed by Swiss law, unless the deceased has expressly reserved the law of his last domicile by will or inheritance contract (Art. 91(2) PIL).

A foreigner with domicile in Switzerland may subject his/her whole estate (a partial *professio iuris* is in such case not recognized by Swiss doctrine) to the law of the country of their citizenship (e.g. to avoid Swiss forced heirship rules). Such choice is upheld provided the testator/trix died with last domicile in Switzerland and, at the time of death, they still held citizenship of the foreign country (Art. 90(2) PIL). Swiss citizens with dual citizenship are deemed only to be Swiss citizens and may thus not subject their estate to the law of the country of their other citizenship.

Inheritance contracts are governed by the law of the last domicile of the deceased at the time of the execution of the contract. The deceased may, however, subject his/her entire estate to the law of the country of their citizenship (Art. 95(1) and (2) PIL).

3 Foreign Succession/Inheritance Orders

Foreign decisions, measures and certificates concerning an estate are recognized in Switzerland if:

- they were rendered or issued in the country of the deceased's last domicile or in the country whose law the deceased has chosen or if they are recognized in one of these countries; or
- if they concern immovable property and were rendered or issued in the country in which the real estate is located or if they are recognized there (Art. 96(1) CC).

Where a country claims exclusive jurisdiction with regard to real estate, only that country's decisions and measures are recognized (Art. 96(2) PIL). Provisional measures of foreign authorities are recognized in Switzerland to the extent they relate to assets of the deceased located in the foreign territory (Art. 96(3) PIL). The further requirements for recognition and enforcement are dealt with in Arts 25-31 PIL.

Foreign certificates and succession orders - if issued by the competent authority in accordance with Art. 96 PIL - are recognized in Switzerland by the authorities without the need for a separate *exequatur* procedure (Arts 29(3) and 31 PIL). However, *vis à vis* third parties (e.g. banks, etc.), a formal *exequatur* procedure (Arts 25-31 PIL) is recommended. In addition, the transfer of estate assets based on foreign succession orders (e.g. certificate of heirs, letters testamentary, letters of administration, grant of probate, etc.) requires that such document is issued by or recognized by the foreign authorities having jurisdiction in accordance with Art. 96 PIL. Such documents must[11] be duly legalized and super-legalized (by a competent Swiss embassy or consulate) or have an apostille[12] in order to be recognized in Switzerland.

4 Two or more Succession or Probate Orders

A final foreign judgment or probate order, if in compliance with the requirements as set out under Section B3, will be recognized in Switzerland in accordance with Arts 25-29 PIL unless Swiss

11 Exceptions may apply according to bilateral and multilateral treaties.

12 Where the foreign state is a signatory of the Hague Convention abolishing the Requirement of Legalisation for foreign public documents of 1961.

proceedings were initiated first or a final Swiss judgment or order has been rendered prior to a foreign order (Arts 27(2)(c) and 31 PIL). In case of two competing foreign orders, the order that has been rendered first has priority, provided it will be recognized in Switzerland in accordance with Art. 96 PIL (Arts 27(2)(c) and 31 PIL).

5 Expert Evidence

There is no necessity for a foreign lawyer to give evidence regarding a foreign will that has been recognized by a foreign court. However, where a Swiss court needs to apply foreign inheritance law (see Section B2), in accordance with Art. 16 PIL, the judge must establish the content of the applicable inheritance law ex officio whereby the parties may be invited to assist in that regard.

If one of the parties has to prove the content of the applicable law, such evidence does not need to be in any particular form, nor does the lawyer in charge have to appear before the judge.

6 The Hague Convention

The Hague Convention applies exclusively (*erga omnes*) both in relation to last wills and inheritance contracts and to related testamentary dispositions such as mutual wills (provided the latter are legitimate under the applicable foreign law: Arts 93, 95(3) and (4) PIL).

7 Wills

The construction of a will, the heirs' entitlement (including compulsory portions) and questions as to who can take as an heir are governed by the substantive law governing the estate (*lex successionis*) (see Section B2).

A person can make a will or inheritance contract if, at the time of execution, they had the capacity to dispose under the law of the country of their domicile, ordinary residence or citizenship held by them (Arts 94 and 95(4) PIL).

Questions as to the validity of a last will or of a specific bequest are governed by the *lex successionis* (see Section B2).

Powers of appointment are not valid testamentary dispositions under Swiss law (see Section A2.3), but they may be recognized where a foreign *lex successionis* applies (see Section B2).

Amendment, revocation or revival of a revoked will are governed by the *lex successionis* (see Section B2).

Swiss forced heirship law applies where Swiss law governs the estate of a deceased with last domicile abroad (see Section B2).

8 Taxation

When a deceased had their last domicile in Switzerland, inheritance tax liability is unlimited. In such a case, the estate or the inherited share of the estate is taxable at the deceased's last domicile (see Section A14).

The principle that real estate is taxed in the canton in which it is located also applies to an international estate. An heir residing in Switzerland is not liable to tax if the estate was inherited from a deceased with last domicile abroad (apart from Swiss real estate). Inheritance tax liability rests with the heirs in the majority of Swiss cantons applying inheritance tax and with the estate in the cantons that know the estate tax. In order to avoid imposing double taxation, Switzerland has concluded several tax treaties in the field of inheritance tax. In most of these treaties, the right to levy inheritance tax is granted to the country in which the deceased had their last domicile. Immovable property and the assets of a permanent establishment are taxed in the country where they are located. Treaties with the United Kingdom, United States and Germany contain special regulations.

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