INTERNATIONAL INHERITANCE FORUM

REPORT ON ARGENTINA

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1. GENERAL RULES

In Argentina, Inheritance Law is governed by the Argentine Civil and Commercial Code ("CCC"). Although the CCC, which entered into force in August 2015, have amended inheritance, matrimonial and private international law rules, the fundamental principle underlying Argentine succession law has not been amended: forced heirship regime.

Under the forced heirship regime, the individual's liability to freely dispose of his or her property by will or by gifts *inter vivos* is restricted, since, according to the law, a portion of the estate is reserved to certain heirs -*forced heirs*-, such us spouse, descendants and ascendants.

1.1 Origin and nature of property

Does your law distinguish between the origin or nature of property (real v personal; movable v immovable)? Are there different rules applicable to different classes of property?

According to Sections 225, 226 and 227 of the CCC, Argentine Law sets forth the definitions of assets according to its nature of property:

(i) Immovable property by its nature: includes the ground, things incorporated into it in an organic way and those found underneath by nature.
(ii) Immovable property by accession: includes movable things that are immobilized by their physical adhesion to the ground with a permanent nature. In this case, furniture forms a whole with the property and cannot be the subject of a separate right without the will of the owner.
(iii) Movable property: includes things that can move by themselves or by an external force.

According to the former distinction, different rules apply to the acquisition of property regime derived from *inter vivos* acts[1].

However, in general terms, the principles applicable to succession law do not vary according to the nature of property[2].

Regardless of this general rule, there is an exception established by international private law (Sections 2643 and 2644 of the CCC). The general rule is that law of the country where the decedent was domiciled at the time of death will govern the succession. However, and regardless of the above general rule, in cases of real estate located in Argentina, Argentinean law will be applicable to real state located therein and, as per jurisdiction, it will be attributed to the judge where the real state is located, as well (in cases of real state in Argentina).

1.2 Simultaneous death

Which rules apply in the case of simultaneous death? How is the death of two or more heirs or testators determined? Are there presumptions?

According to Section 95 of the CCC, in case of a simultaneous death produced in a natural catastrophe or similar circumstance, the law sets forth that the time of death is the same for all decedents, unless proved otherwise. General rules of inheritance law apply.

[1] Title IV of CCC.
[2] Section 2425 CCC.

1.3 Capacity to inherit

Who is capable of inheriting? For example, can minors, unborn children and absentees inherit? Are there restrictions based on nationality or domicile?

Section 2279 of the CCC sets forth that any human being alive at the time of death of the decedent is capable of inheriting, as well as (i) unborn children –if born alive afterwards[3]-; (ii) children born through medically assisted reproduction techniques after the death of the decedent –in compliance with the consent set forth by Section 561 CCC[4]- and (iii) legal entities if created before the death of the decedent and foundations created by will.

In general terms, minors are represented by the surviving parent. If there is no single surviving parent, the intervening court will appoint a legal representative to handle all the assets on the minor's behalf. Any disposition of a minor's assets shall require the approval of the court. A minor is entitled to inherit and own assets through his/her legal representative.

There are no restrictions based on nationality or domicile.

1.4 Ownership and vesting of property

Who has the ownership or the legal possession (seisin) of estate property on death? Are the legal or testamentary heirs automatically (by operation of law) vested with the deceased's property rights on death, or are there required judicial or administrative procedures before vesting takes place?

According to Section 2277[5], 2280 and 2337 CCC, legal forced heirs are vested with the decedent's property rights automatically on death, without any formality or judicial intervention. However, in order to exercise any transfer of assets or any property rights, a judicial proceeding is required in order to confirm their entitlement as heir.

Consequently, a judicial proceeding shall necessarily takes place (*the inheritance proceeding*) in order to identify the heirs, determine the content of the inheritance, collect any outstanding credit, pay the debts and register certain assets before the public registries (Section 2335 CCC).

The decedent's last domicile determines the territorial jurisdiction (Section 2336 CCC). In case of real property located in Argentina, jurisdiction shall be determined by the location of the real property (Section 2643 CCC). If real property is located in different Argentine states (provinces), the applicant may (but is not required to) file its petition in any of those jurisdictions.

In case the decedent has granted a will, a judicial proceeding is also required in order to invest heirs with their inheritance rights (Section 2338 CCC) and exercise any right.

[3] According to Section 21 CCC the existence of a human being begins with conception. According to this principle, all legal rights will be granted with the same extent as any person already born. So, human beings who were conceived by the time of death are considered heirs to the decedent. However, their heirship depends on the fact that they are later born alive. Otherwise, they are considered as if they never existed.

[4] Sections 560, 561 and 562 CCC rule the assisted human reproduction techniques and set forth that those born by assisted human reproduction techniques are considered children of the person who gave birth and the person (man or woman) who gave its prior, informed and free consent to undergo the technique. The consent must be renewed each time gametes or embryos are used and is freely revocable as long as the conception has not occurred or the embryo has not been implanted. See also Medina, Graciela, "*Derecho de sucesiones y principios del Código Civil y Comercial*" 09/12/2015, 1 - LA LEY2015-F, 1169TR LALEY AR/DOC/3392/2015.

[5] Alterini, Atilio, Alterini, Jorge H., *'Código Civil y Comercial comentado. Tratado Exegético'*, La Ley, 2015, Tomo XI (Section 2277, 2280 and 2337).

1.5 Unworthiness

Are certain persons presumed or deemed unworthy to inherit by operation of law?

Upon the decedent's death, any of the heirs is entitled to file a legal action to exclude another heir by invoking one of the statutory causes for indignity set forth in Section 2281 CCC. The following persons are deemed unworthy to inherit:

a) authors, accomplices or participants of a willful offence against the person, honor, sexual integrity, freedom or property of the deceased, or of his descendants, ascendants, spouse, cohabitant or siblings. The extinction of the criminal action does not make the indignity cause to cease.

b) those who have seriously mistreated the deceased, or seriously offended his memory;

c) those who have accused the deceased or filed a complaint against him for a crime punishable by imprisonment or confinement, unless the victim of the crime is the accuser, his spouse or cohabitant, his descendant, ascendant or brother, or has acted in compliance with a legal duty;

d) those who omit to report the malicious death of the deceased, within one month of its occurrence, unless before that term the justice system proceeds by reason of another report or pursuant to the law. This ground for indignity does not include incapable people or with restricted capacity, nor the descendants, ascendants, spouse and siblings of the murderer or of his accomplice;

e) the relatives or the spouse who have not provided the deceased with due support payment or maintenance, or have not taken him to a suitable place if needed;

f) the extra-marital parent who has not voluntarily recognized the deceased during his minor age;

g) the father or mother of the deceased who has been deprived of parental responsibility;

h) those who have induced or coerced the will of the deceased to grant a testament or not to do so, or to modify it, as well as those who falsify, alter, subtract, conceal or substitute the testament;

i) those that have incurred in the other grounds for ingratitude that allow to revoke the gifts[6].

In all the aforementioned cases, it is sufficient to prove that the unworthy person is responsible for the harmful act, without the need for a criminal conviction.

The forgiveness of the deceased makes the unworthiness to cease. The testament in which the unworthy person is benefited, subsequent to the unworthy events, entails the forgiveness, except that the ignorance of such facts by the testator is proven (Section 2282 CCC).

1.6 Acceptance

How does an heir accept? Can acceptance be tacit, or must it be express? Is the heir presumed or deemed to have accepted in certain circumstances?

An heir (even a "forced heir") is free to accept or renounce their heirship (Article. 2287 CCC)[7]. The right to accept an heir shall be exercised within the 10 year term as of the commencement of the succession judicial

[6] The causes that allow revoking gifts are established by section 1569 CCC and they are: non-execution of the charges (in the case of donation with charges), ingratitude of the donee and, in the event that it has been expressly stipulated, superbirth of the donor's children.
[7] Alterini, Atilio, Alterini, Jorge H., *'Código Civil y Comercial comentado. Tratado Exegético'*, La Ley, 2015, Tomo XI (Section 2286 and subsequent).

proceedings (Section 2288 CCC). If the heir does not exert his/her right during this period, it will be understood as an act of refusal (Section 2288 CCC).

Acceptance or refusals are always of the inheritance as a whole. An heir is not entitled to accept a part of the estate and refuse another. The act of acceptance or refusal is, therefore, *indivisible*.

The acceptance of a will can be made expressly or implicitly[8]. An express acceptance shall be made through a public deed or a written signed document. It is implicit when the heir performs certain acts revealing his/her intention to accept the heir, such us the submission of the petition to initiate the succession proceedings; the occupation of real property of which the deceased was owner or co-owner one year after his death; the waiver of inheritance rights in favor of one or some heirs, even if it is gratuitous, among others.

1.7 Liability for debts

Does acceptance entail liability for the deceased's debts? To what extent are the heirs, who accept an estate, liable for its debts? If they are liable, can they accept under benefit of inventory? In other words, how do heirs accept without incurring personal liability exceeding their benefits under the law or under the will? Are there circumstances in which the heirs forfeit their rights to request an inventory or to accept subject to an inventory?

According to Argentine Law, the acceptance of the estate implies always a separation between the estate of the heir and the estate of the deceased[9]. Creditors to the deceased shall have no claim on the estate of their heirs.

Section 2321 provides for an exception to this rule: in case of an heir who behaves dishonestly or fraudulently towards the estate of the decedent, aggravates the debts of the estate or fraudulently conceals assets, he/she shall incur in personal liability[10].

During the stage of "*indivision*" (the period between the death of the deceased and the division of the assets among the heirs), the deceased's creditors may collect their credits over the deceased's goods.

1.8 Renunciation and disclaimer

When, and how, may an heir expressly renounce to or disclaim an inheritance? Are there situations in which the law deems that an heir has renounced, e.g., concealment of property? What are the effects of renunciation? Is a person who renounces generally or disclaims deemed never to have been an heir?

Section 2298 CCC entitles the heir to renounce an inheritance. There are formal requirements to renounce: by a notarial deed or by a judicial statement filed before the succession judicial proceedings. If an heir renounces to the inheritance, it will be understood as if he never existed as heir (section 2301 CCC).

[8] Section 2293 CCC. Forms of acceptance. The acceptance of the inheritance can be express or tacit. It is express when the heir takes the capacity as such in an act granted by a public or private instrument; it is tacit if he grants an act that necessarily implies his intention to accept and that he cannot have carried out but as an heir.
Section 2294. Actions that imply the acceptance of the inheritance:
a) the filling of the succession petition or the presentation in a trial in which the heir status or rights derived from it are claimed;
b) the disposal of property for valuable consideration or free of charge, or the file of possessory actions over it;
c) the occupation or habitation of real property of which the deceased was owner or co-owner one year after his death;
d) the fact of not filing the lack of acceptance of the inheritance in case of having been sued as heir;
e) the assignment of inheritance rights, whether for valuable consideration or free of charge;
f) the waiver of inheritance rights in favor of one or some heirs, even if it is gratuitous;
g) the waiver of inheritance rights for a price, even if it is in favor of all heirs.
[9] Section 2280 and 2317 CCC. Alterini, Atilio, Alterini, Jorge H., *'Código Civil y Comercial comentado. Tratado Exegético'*, La Ley, 2015, Tomo XI; Herrera, M, Caramelo G. y Picasso S., "*Código C*ivil y Comercial Comentado", 1st. Edition, Infojus, 2015.
[10] Alterini, Atilio, Alterini, Jorge H., *'Código Civil y Comercial comentado. Tratado Exegético'*, La Ley, 2015, Tomo XI; Herrera, M, Caramelo G. y Picasso S., "*Código C*ivil y Comercial Comentado", 1st. Edition, Infojus, 2015

1.9 Marital rights

Are property rights acquired by spouses (howsoever defined) during the course of their marital relationship (howsoever defined) considered for purposes of determining a spouse's entitlement to an intestate share or determining a spouse's entitlement under a testamentary disposition? To what extent, if any, must a spouse elect between his, her or their matrimonial property rights and his, her or their intestate rights or rights under a will? Does a surviving spouse have a prior claim to a family residence or homestead in addition to or as part of any intestate claim or claim under a will?

Under the CCC, the future spouses have the possibility of choosing between a shared property regime or a separate property regime to rule their marriage. If no marriage agreement is made or the marriage agreement does not set forth any provision regarding the property regime, the shared property regime will be applied (Section 463 CCC).

Argentine law recognizes marriage between same-sex couples[11], so the same marital property regime applies in such cases.

Section 448 CCC sets forth that, in order for a marriage convention to be valid, it must be executed by public deed. For a marriage convention to be effective towards a third party, the marriage certificate must include a note in the margin specifying the chosen regime.

If spouses decide to change their chosen regime, the amendment must also be made by convention and by a public deed, for which the spouses must have been married for at least one year.

The decease of one of the spouses produces the termination of the marriage and its property regime. If the property regime in force at the time of death was the separate property regime, the descendants and the surviving spouse receive identical portions over the deceased estate. On the contrary, if the property regime in force at the time of death was the communal property regime, the marital community will be liquidated. This situation produces two circumstances:

1. Regarding the deceased's own property (assets acquired before the marriage or inherited): the surviving spouse receives an identical portion as that of the descendants over the deceased estate (equal portions among all of the descendants and the spouse).

2. Regarding the matrimonial assets: the surviving spouse receives the half of the matrimonial assets derived from the termination of the marriage regime. The surviving spouse does not inherit in the half of the matrimonial assets that belong to the deceased spouse.

Considering that Argentina has a forced heir system, concurrence among descendants and the spouse is limited to the decedent's non-marital property.

The CCC also provides protection for the family home and, in the event of the death of one spouse, the surviving spouse is granted the right of free housing in the home they shared[12]. However, the CCC does not recognize cohabitees' inheritance rights over their partner's assets.

2. INTESTACY

2.1 Declarations of inheritance

[11] Law 26,618, July, 2010.
[12] Sections 2383 CCC and 527 CCC –in case of cohabitees- .

Who establishes intestate entitlement? Are judicial, notarial or other formal declarations or certificates required to confirm entitlement?

A judicial petition shall be filed (the inheritance proceeding) in order to identify the heirs, determine the content of the inheritance, collect any outstanding credit, pay the debts and register certain assets before the public registries.

In order to confirm entitlement, the heir shall submit a petition along with supporting documents such as personal data of the deceased, last domicile, death records and birth and marriage records of the heirs. Those documents shall be submitted along with the petition[13].

The judge shall order to serve notice of the succession proceedings to the other heirs by publication through the Official Gazette and a local newspaper. A judicial request shall also be submitted before the Registry of Wills in order to check if the decedent left any wills. Another judicial request will be made to the Registry of Universal Proceedings in order to find out if any other probate proceedings concerning the deceased have been initiated in another jurisdiction. Once all these fillings have been complied with, the judge will issue the "declaration of inheritance".

Judicial proceedings are subject to local procedural law.

2.2 Relationship

Who is entitled to inherit? Is relationship based solely on blood? Do adopted children inherit their adopting parents' estates? Is the surviving spouse an intestate heir? For purposes of intestacy, who is a spouse?

Argentina has a forced heirship regime. The forced heirship portion refers to a portion of the estate that is reserved for certain heirs (the forced heirs) by law.

This allows for descendants, ascendants and the surviving spouse to have a reserved portion in the deceased estate which cannot be deprived either by will or by any free *inter vivos* act (gifts).

Relationship is based on blood –ascendants, descendants and collateral, until the fourth grade- but also on marital rights. According to Argentine Law, marriage requires the fulfilment of conditions set forth by law: free consent expressed in the presence of a public officer (Section 418 CCC).

Although Argentine Law recognizes certain rights to cohabitees provided they have been together for at least two years, it does not recognize cohabitees' inheritance rights over their partner's assets (Section 509 and subsequent of the CCC).

In case of descendants, adopted children are vested with the same rights as birth children (Section 2430 CCC).

2.3 Order of preference

What is the order of preference? Is inheritance based on degrees of relationship?
What are the proportionate interests of descendants, ascendants and collaterals?

The law set forth how heirs are vested over the decedents based on degrees of relationship (Section 2424 to 2443 CCC). The forced heirs are:

➢ Descendants: they exclude the ascendants and concur with the spouse (Section 2426 and 2433 CCC). Concurrence among descendants and the spouse is limited to the decedent's non-marital property. The

[13] Section 2335 CCC.

decedent's own property is distributed in equal portions among all of the descendants and the spouse (Section 2433 CCC). Among themselves, descendants equally inherit the deceased's estate (Section 2426 CCC). Grandchildren inherit by representing the predeceased offspring (Section 2428 CCC)

➢ Ascendants: if there are no descendants, ascendants concur with the spouse over the non-marital property in halves. Among themselves, ascendants equally inherit the deceased's estate (Section 2431 and 2434 CCC)

➢ Spouse: the spouse may concur with descendants or ascendants (Section 2433-2437 CCC). If no descendants or ascendants survive, the surviving spouse is entitled to the whole estate.

➢ Collateral relatives: if no descendants, ascendants or spouse exist, collateral relatives, until the fourth degree of relationship, are equally entitled to the estate (Section 2438-2440 CCC).

According to the forced heir system set forth by the inheritance law (Section 2445 CCC), reserved portions are:

- Descendants: two-thirds.
- Ascendants: one-half.
- The surviving spouse: one-half.

Beyond the reserved shares, individuals may freely dispose of their property, either by gift during their lifetime or by a will.

In case there are disabled heirs, Argentine Law allows individuals to improve the reserved portion of disable heirs[14]. Under this scenario, the reserved shared of other heirs may be reduce by up to a third.

3. WILLS

3.1 Formalities

How many types of wills are there? What are their formal requirements?

According to the CCC, there are two types of wills[15]:

- Holographic will, as defined by Section 2477 and 2478 CCC. It shall be handwritten by the testator dated and signed.

- Notarized will, as defined by Section 2479 CCC. It shall be made before a public notary and two witnesses, and then entered into a public deed[16].

A will is only valid if made pursuant to the formalities provided by Argentine law[17].

3.2 Revocation and revival

Is it possible to revoke a will, and how may it be revoked? Can a revoked will be revived, and how may it be revived?

[14] Section 2448 CCC.
[15] Section 2462 and subsequents CCC.
[16] Alterini, Atilio, Alterini, Jorge H., *'Código Civil y Comercial comentado. Tratado Exegético'*, La Ley, 2015, Tomo XI; Herrera, M, Caramelo G. y Picasso S., "*Código C*ivil y Comercial Comentado", 1st. Edition, Infojus, 2015
[17] Alterini, Atilio, Alterini, Jorge H., *'Código Civil y Comercial comentado. Tratado Exegético'*, La Ley, 2015, Tomo XI.

As wills are personal and individual acts[18] they shall be revoked at any time by the testator. The right to revoke a will cannot be restricted or renounced (Section 2511 CCC).

The revocation of a will shall be made expressly or tacitly. If revocation is made expressly, it shall comply with the same formal requirements set forth to grant a will (Section 2511 and 2512 CCC). In addition, granting a subsequent will by the testator implies that the former was revoked, unless it is expressly confirmed[19].

If the grantor of a will marries after granting the will, it is understood that the former will is no longer valid, unless he/she appointed as universal inheritor the person he/she later married[20]. .

3.3 Recognition, publication and probate

Describe your system's extrajudicial or judicial procedures, if any, for recognition and publication of a will. Which authority (judicial, notarial or other) determines whether a will has been validly executed in compliance with formal requirements?

In case the decedent has drafted a will, a judicial proceeding is required in order to invest heirs with their inheritance rights[21].

In case of a holographic will, the judge shall confirm that the hand-writing corresponds to the testator. This is made by a calligraphic expertise carried out by a court-appointed expert. If it were a notarized will, its validity is presumed and whoever disputes it shall prove that the document was modified. The judge will require the Public Notaries Association to inform if there exists any other will that may not have been submitted by the heirs. Once the necessary evidence has been produced (the expert report and any required report), the judge shall pass judgement on the validity of the will.

3.4 Curing formal deficiencies and rectification

Can your courts save, cure or validate testamentary paper that does not comply with formal requirements? Where a will contains errors, slips or omissions or where a will fails to carry out the testator's instructions, do your courts have a power to rectify the will?
What remedial powers, if any, can your courts exercise in order to secure the testator's true intentions?

No. Courts are not entitled to save, cure or validate wills that do not comply with formal requirements (Section 2473 CCC). Under this scenario of non-compliance, wills may be deemed null and void.

3.5 Pacts and agreements as to future successions

Does your law permit parties to enter into covenants, pacts or agreements with respect to future successions?

According to Section 1110 CCC, any general agreement entered into by and between future heirs during the deceased's life is null and void.

However, the CCC has allowed agreements over future inheritances as long as the covenants fall over the equity of companies or other business ventures with the aim of maintaining the management unity or

[18] Section 2465 CCC.
[19] Section 2513 CCC.
[20] Section 2514 CCC.
[21] Section 2339 CCC.

preventing or solving conflicts, and the dispositions do not deprive forced heirs of their reserved portions, nor affect the spouse or third parties' rights[22].

3.6 Forced, reserved and elective shares and other legal rights

Are there portions of an estate that are reserved for certain individuals (forced heirs)? Who qualify as forced heirs? What portion of an estate is reserved for these heirs (portio legitima) and what portion is freely disposable under a will?
How is the quantum of the forced share calculated? Are lifetime gifts (gifts inter vivos) taken into consideration and, if so, are these lifetime gifts reduced if estate assets are insufficient to satisfy claims of forced heirs?
Are there limits (monetary or otherwise) when calculating the forced shares?
Do the forced shares constitute ownership claims on estate property (real rights or rights in rem), or are they expressed as monetary claims? Can the forced shares be satisfied by a life interest or enjoyment (usufruct), an interest in trust or any other proprietary entitlement less than full ownership?
As between forced heirs, e.g., siblings, are there mechanisms to secure equal treatment? Some systems have laws entitling certain persons, notably a spouse, to elect to receive a portion of a decedent's assets instead of benefits under a will. If this applies to your system, describe the applicable law.

According to the rules described above, Argentinean Law set forth a forced heirship regime. Therefore individual's liability to freely dispose of his or her property by will or by gifts *inter vivos* is restricted, since, according to the law, a portion of the estate is reserved to certain heirs -*forced heirs*-, such us spouse, descendants and ascendants.

According to the forced heir system set forth Section 2445 CCC, reserved portions are:

- Descendants: two-thirds.
- Ascendants: one-half.
- Surviving spouse: one-half.

Beyond the reserved shares, individuals may freely dispose of their property, either by gift during their lifetime or by a will.

The portion of the reserved share is estimated using the aggregate value of the estate at the time of the decedent's death and the computable gifts provided for each of the forced heirs (section 2445 CCC).

In the case of the spouse, the surviving spouse receives the half of the matrimonial assets derived from the termination of the marriage regime. The surviving spouse does not inherit in the half of the matrimonial assets that belong to the deceased spouse.

Division of the estate may be made by forced heirs either by assigning the property over the specific goods that shall compose their respective lots or by assigning quantum of the parts of the estate[23].

As a consequence of the forced heirship system, any provisions or structures used by the decedent which conflict with the portions under the forced heir regime can be challenged by a legal action in order to request compliance with their inheritance rights.

In case of *inter vivos* gifts made by the donor during his lifetime to his legal heirs, descendants and spouse are entitled to claim that gifts received by the other legal heirs shall be presumed an advance of the heirs´ reserved

[22] Araya, Tomás – Romero, Melisa, "*Family business in the new Civil and Comercial Code*", Derecho de Familia, Revista Interdisciplinaria de Doctrina y Jurisprudencia, Editorial Abeledo Perrot, Julio, 2015.
[23] Section 2363 CCC.

share in the estate (Section 2385 CCC), unless the donor specifically states that the gift shall be deemed to have been made from the estate in excess of the reserved portion.

Argentine law also entitles heirs to submit a reduction action (Section 2417 CCC), aimed to protect the reserved share and is meant to reduce any device or bequest made in a will or as a gift *inter vivos* in excess of their rightful portion or in excess of the available share[24].

3.7 Disinheritance

Does your system permit disinheritance (disherison, exheredation)? On what grounds can forced heirs be disinherited?

The Civil and Commercial Code does not provide for a disinheritance system.

3.8 Dependants' relief or maintenance

If your system provides for dependants' relief or maintenance, who is entitled to claim?
Does your system provide a mechanism for dependants, who are not forced heirs, to make an alimentary or maintenance claim? If so, on what grounds can they make a claim? Are there limits to these maintenance claims? Can forced heirs submit a maintenance claim, in addition to their forced share, against the disposable portion of the estate?
If your system does not have forced, reserved or elective shares, can a claim be made against the estate by dependants and, if so, who may make such a claim and on what grounds?
In general, describe who may make a claim for maintenance where a will has not made adequate provision. Must a maintenance claim be made within a certain time?

The surviving spouse has a residence right in the house in which both spouses shared[25]. Section 554 CCC sets forth that the maintenance obligation ceases with the death of the obligated party. The obligation of maintenance is not transferable to the heirs. If there were any food quota or maintenance right that was accrued but not paid by the deceased, the beneficiary may claim its payment to the succession, and it will be treated as a succession liability.

3.9 Restraints on freedom of testation

Are there restraints on freedom of testation, other than the issues outlined under 3.5 and 3.6?

There are no other restraints on freedom of testation.

4. ADMINISTRATION

4.1 Intestate administration

Who administers an intestate estate? Is there a requirement to appoint an administrator? Do the heirs agree on the administrator and on the terms of administration, or does a court or other authority appoint an administrator?
Describe the administration of intestate estates.

[24] Section 2452 and subsequent CCC.
[25] Sections 2383 CCC and 527 CCC.

Administration of the estate should be carried out by an administrator. Any person with full civil capacity[26] may be appointed as administrator. In an *intestate estate*, the appointment of an administrator can be made by the heirs (by majority). In the absence of a majority, any of the heirs is able to judicially request its designation as administrator, which shall be preferably assigned to the surviving spouse if there are no reasons to justify another decision. Furthermore, in the event of absence, resignation or lack of suitability of the spouse, it shall be assigned to one of the heirs. A third party can be appointed if there are special reasons that make it convenient for the heirs (Section 2346 CCC).

If no administrator has been appointed, any heir can take action to preserve the estate in urgent situations (Section 2352 CCC). To undertake acts of administration or disposition, he/she must obtain the consent of the other heirs.

The administrator must carry out conservatory actions regarding the assets comprised in the estate and continue with the normal course of the business of the deceased. In order to dispose of assets, the unanimous agreement of the heirs or judicial authorization is requested. In addition to managing the property of the estate, the administrator shall promote the execution of assets to the extent necessary for payment of debts and legacies (Section 2353 CCC). Any ordinary or extraordinary acts of administration (such as investment) would need a special authorization from the community of heirs or a special mandate (a power of attorney) expressly including those faculties, granted by unanimous approval of the community of heirs, or, if the latter could not be obtained, the authorization of a judge (Section 2325 CCC).

With the prior authorization of the heirs or judicial authorization, the administrator shall collect the credits of the deceased, continue with judicial claims filed by the decedent, promote any necessary claim to secure rights and be a party to legal proceedings which the deceased was sued. In no case is the administrator entitled to perform acts that involve the disposition of the rights of the decedent (Section 2354 of the CCC).

Unless the majority of the heirs had agreed on other term, the administrator of the inheritance shall render accounts of his administration quarterly, or with the periodicity established by the succession judge (Section 2355 of the CCC).

4.2 Testamentary administration

Who administers a testamentary estate? If an executor or administrator has been named under the will, is there a requirement for the appointment to be confirmed by a court or other authority?

Describe the administration of testate estates.

The testator may appoint an administrator or an executor of the will. The powers of the executor are those conferred by the testator or, in the absence of them, those that are necessary to achieve the fulfillment of his will. Any person with full civil capacity, legal entity and Public Administration organisms' may be appointed as executor. The executor is not able to delegate its duty to another person, not even the heirs. However, the executor is entitled to empower a different person to act on his/her behalf[27].

The executor must secure the hereditary estate and carry out an inventory of the assets, pay the legacies and reserve the assets necessary to provide for the dispositions of the testator, giving them the appropriate destination, and assure that the heirs and legatees fulfill the charges that the testator has imposed on them. The

[26] According to Argentine Law, legal capacity of every individual is expressly recognized. Any individual aged 18 is entitled to exercise his/her rights (Section 25 CCC). In exceptional circumstances, restrictions on capacity may be established (Section 31 CCC). However, such restrictions can be only imposed by a court on behalf of the person who suffers from an addiction or a permanent or prolonged mental disorder, of sufficient severity, and where the court considers that the exercise of the individual's full capacity may result in damage to his/her person or property. Such a restriction of capacity can only be agreed in relation to certain acts, as specified by the court. Therefore, with respect to acts which the judgment does not mention, the general rule of presumption of capacity to act prevails. Personal autonomy must be affected as little as possible, so that the scope of restriction must be kept to a minimum.

[27] Section 2523 and subsequent CCC.

duties of an executor do not include defending the interests of the heirs. The executor is obliged to account for his management to the heirs.

The heirs may demand the destitution of the executor due to supervening restriction of capacity, negligence, insolvency or misconduct in the performance of its function.

The executor shall receive the remuneration established on the will or, failing that, the one assigned by the judge. The executor's duties conclude with the complete execution of the will, because of the expiration of the term set by the testator or because of the death, supervening incapacity, resignation or dismissal of the executor.

4.3 Management and control

To what extent, if any, is the management and control of an intestate or testate estate, by the heirs, by a court-appointed administrator or by the executor under a will, supervised by a court or subject to judicial oversight? For example, are administration fees subject to court review? Must administrators publicly file accounts?

The administrator is not obliged to warrant the fulfilment of its obligations, except in the case that the testator or the majority of the heirs demand it, or it is ordered by the judge at the request of any interest party who demonstrates the need of such measure.

Any interested party may request the judge to remove the administrator if there is an impossibility of exercising the position of poor performance of its duties. While this request is solved by the judge, it is possible to designate a provisional administrator.

Unless the majority of the heirs had agreed on other term, the administrator of the inheritance shall render accounts of his administration quarterly, or with the periodicity established by the judge[28]. Once the administration is concluded, the administrator shall present the definitive account. If all co-owners of the undivided property (heirs) are fully capable and have agreed upon, the rendering of accounts shall be made privately, and the expenses shall be paid out of the estate. Otherwise, it shall be judicially carried out. The co-owners of the undivided property shall be informed and are entitled to challenge it[29].

[28] Section 2355 CCC.
[29] Sections 2361 and 2362 CCC.