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INTERNATIONAL INHERITANCE FORUM

REPORT ON SWITZERLAND

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1. Introduction

Switzerland is a federal state. It is organised on three political levels: the Confederation, the 26 cantons and some 2172 communes share power. The Confederation enjoys the prerogatives assigned to it by the Constitution, which it exercises either exclusively or in competition with the cantons, depending on the field.

Federal civil law regulates inheritance law. Articles 457 to 640 of the Swiss Civil Code ("CC") govern the main aspects of inheritance law. Certain federal laws supplement the provisions of the Swiss Civil Code. These are, in particular, the following:

- the Federal Law on Rural Land Law - LDFR (applicable to the inheritance of rural land real estate and agricultural holdings);
- the Federal Law on Debt Collection and Bankruptcy - LP (for creditor's rights in relation successions);
- and the Federal Law on Insurance Contracts of 2 April 1908 (in particular for the interpretation of the beneficiary clause of an insurance contract).

Cantonal legislation specifies the public law bodies to which vacant successions devolve (Article 466 CC) as well as the authorities responsible for executing the law.

Cantons are responsible for implementing the law and are solely responsible for inheritance tax matters. As a consequence, the tax and administrative treatment of successions can be very different from one Canton to another.

The present contribution aims at providing an overview of the general rules of Swiss inheritance law. It will also highlight amendments expected to come into force shortly. Indeed, whereas only selected amendments have been introduced to the inheritance law provisions of the Swiss Civil Code since its introduction in 1907, these provisions are about to undergo a major revision which will come into force on January 1st, 2023.

2. General rules

2.1 Origin and nature of property

Swiss civil law distinguishes between movable (personal) and immovable (real estate) property. In the context of a succession opened in Switzerland, this distinction has no influence on the civil aspects. It may, however, have an influence on the tax aspects, in particular on the authority which will be competent to tax the transfer to the heirs.

2.2 Opening of succession

The succession is opened by the death (Article 537 CC) or the declaration of absence (Article 35 CC) of the deceased at his last domicile (Article 538 CC). The effects of the declaration of absence date back to the day of the danger of death or the last news (Article 38 paragraph 2 CC). In Swiss domestic law, a declaration of absence is declared by the judge when the death of a person who has disappeared in danger of death or of whom there has been no news for a long time seems very likely (Article 35 CC). A declaration of absence (Article 546 CC) has the same effects as death. However, when a person is declared absent, his or her heirs or other beneficiaries must provide security to the competent authority in order to guarantee the restitution of the succession to the absent person, should he or she reappear.

The probate authority at the last domicile of the deceased shall be competent for the entire estate. It shall take ex officio the necessary measures to protect the succession (e.g. sealing of the estate, inventory, appointment of an administrator, reading of last will). In cases where the probate authority does not know whether all heirs are known it shall summon by public notice the entitled persons to make themselves known within one year.

All persons holding a last will of the deceased must deliver it to the probate authority as soon as they have knowledge of the death of the deceased even if it appears to be null and void (Article 556 CC). The last will(s) of the deceased shall be read by the probate authority within one month after delivery. Statutory and instituted heirs shall receive a copy of the will; legatees shall receive a copy of the clause of the will which concerns them.

One month after notification of the interested parties, the statutory heirs or the heirs instituted in a will or inheritance pact may request the authority designated by the canton of domicile of the deceased to issue a certificate of inheritance unless opposition thereto is validly formed by statutory heirs or heirs as per prior testamentary dispositions (Article 559 CC). Depending on the canton, the competent authority may be the commune judge, the district court, the clerk of the court or a notary.

2.3 Principle of universal seisin

The heirs acquire by operation of law, in common, the entire succession on the day of death of the deceased (Articles 560 et seq. CC). Swiss inheritance law indeed applies the principle of universal seisin, i.e. all rights (including claims, rights of ownership, limited rights in rem, rights of possession and debts) and obligations (except in cases provided for by law (in particular debts for family maintenance which are extinguished on the death of the debtor) pass to the heirs of the deceased as soon as the succession is opened and even though they may not wish for it, unless the heirs renounce their rights within three months (cf. infra Nr. 2.5). There is thus no need to send for possession or for an administrator to intervene, as under Swiss law "the dead seize the living" in application of the principle of universal seisin. If there are several heirs, they acquire joint ownership of the rights and are joint and several debtors of the deceased's obligations towards creditors who are not at the same time heirs, the claims of certain heirs against the succession being settled in the division procedure.

It is only the division of the succession which will make it possible to individualise the rights and obligations of each heir: as long as division has not taken place, both the administration and disposal of the succession's assets are governed by the principle of joint ownership according to which decisions are taken jointly and unanimously (Articles 602 and 653 CC).

2.4 Capacity to inherit

Any person, physical or corporation, can be a successor. There are therefore no restrictions related age, nationality or domicile of the successor. However, there are two civil disabilities:

- The first concerns the public officer and the witnesses who participate in the establishment of a will or inheritance pact (as well as their descendants, ascendants, brothers and sisters). They may not be beneficiaries of dispositions made in their favour in the said will or inheritance pact (Article 503 paragraph 2 CC).

- The second concerns persons who have rendered themselves unworthy for one of the reasons exhaustively set out in Article 540 CC:

  (i) he or she wilfully and unlawfully caused or attempted to cause the death of the person now deceased;
  (ii) he or she wilfully and unlawfully rendered the person now deceased permanently incapable of making a testamentary disposition;
  (iii) by malice, coercion or threat he or she induced the person now deceased to make or revoke a testamentary disposition or prevented him or her from doing so;
  (iv) he or she wilfully and unlawfully eliminated or invalidated a testamentary disposition in such a manner as to prevent the person now deceased from drawing up a new one.

  Forgiveness however ceases the unworthiness.

Only a person who survives the deceased can be his heir or legatee (Articles 542 and 543 CC). A conceived child is capable of inheriting from the moment of conception onwards provided the childs is subsequently born alive; a stillborn child is disregarded for inheritance purposes (Article 544 CC). However, by a substitution clause contained in a will, the deceased may appoint a person who is not yet alive at the time the succession is opened as heir or legatee (Article 545 CC).

The time of death is determined according to the law of persons (Articles 32 et seq. CC). It is sufficient for the successor to have survived the deceased for a moment only. When two persons have died without it being possible to establish whether one survived the other, their deaths are deemed to have taken place at the same time; neither of them succeeds the other (Article 32 CC). As long as the heir survived the deceased, he/she has fully acquired his/her inheritance rights and all of these rights (including the legal remedies for enforcing them) form part of his/her own succession and pass to his/her heirs. In the case of a legatee, if he/she dies before the testator, his/her legacy is extinguished in favour of the person who would have been obliged to deliver the legacy to him/her, unless some other intention is evident from the disposition.

2.5 Acceptance and renunciation

As a result of the principle of universal seisin, upon the death of the deceased, the heirs acquire the estate in its entirety by operation of the law (Article 560 CC; cf. infra Nr 2.3). Thus, subject to statutory exceptions, all rights and obligations of the deceased (including claims, rights of ownership, limited rights in rem, rights of possession and debts) are vested in the heirs jointly even though they may not know this or wish for it.

However, heirs have the right to renounce the estate devolved to them within three months from, for statutory heirs, their awareness of the death of the deceased and, for instituted heirs, the date they were officially informed of the disposition in their favour (Article 566 et seq. CC). An heir must declare his/her renunciation orally or in writing to the competent authority (Article 570 para. 1 CC). It must be unconditional and without reservation (Article 570 para. 2 CC). If an heir does not expressly renounce the estate during such time period, he/she will be deemed to have accepted it even though such acceptance may be tacit. If an heir takes administration measure during such time period, he/she will also be considered as having accepted the estate.

To obtain information and in particular to decide whether or not to renounce the estate, an heir may request the authorities to make a public inventory of the estate within one month from, for statutory heirs, their awareness of the death of the deceased and, for instituted heirs, the date they were officially informed of the disposition in their favour (Article 580 et seq. CC). A request filed by one of the heirs is also valid for the other heirs. After closing of the inventory each heir must declare within a month his/her intentions with regard to the inheritance. He/she may either:

- ***renounce the estate;***
- ***accept the estate subject to public inventory, i.e. the estate devolves to him/her together with the debts listed in the inventory;***
- ***accept the estate without limitation; or***
- ***request the official liquidation of the estate (unless another heir has declared his/her unconditional acceptance; in such case an official liquidation cannot be requested).***

Where an heir renounces the estate, if the deceased has not taken testamentary dispositions, his or her share of the estate passes to the other heirs as if he or she had predeceased (Article 572 para. 1 CC). If the deceased has taken testamentary dispositions, any share of the estate disclaimed by an insituted heir passes to the testator's nearest statutory heirs, unless other intentions on the part of the testator are evident from the testamentary disposition (Article 572 para. 2 CC). Where the inheritance is renounced by all the closest heirs, the estate is liquidated by the bankruptcy office (Article 573 para. 1 CC). If the descendants renounce the succession, the surviving spouse has one month to decide whether to accept the succession (Article 574 CC). If liquidation produces a surplus

after payment of debts, this passes to those entitled to inherit as if they had not renounced it (art. 573 para. 2 CC).

The heir who renounces the estate is in principle considered as never having been an heir. However, the Swiss Civil Code provides for a certain protection of the creditors of the estate as well as the creditors of the heir. Heirs who renounce an overindebted estate do, indeed, remain liable to the creditors of the estate in proportion to the assets they received from the deceased within five years preceding the death of the deceased and which upon division of the estate would be subject to hotchpot (Article 579 CC). Also, where an overindebted heir renounces the estate for the purpose of depriving his/her creditors, the latter or the administration in bankruptcy may, unless their claims are secured, challenge the renunciation within six months (Article 578 CC).

2.6 Marital rights

Spouses are subject to a matrimonial property regime. Such matrimonial property regime will in particular govern the right of property, administration and disposition of the spouses on their property and their liability for debt but also division of their assets upon termination of marriage by divorce or by death of a spouse. Under Swiss law, there are three basic matrimonial property regimes: participation in acquisitions, community of property and separation of estates.

Upon the death of the deceased, the heirs acquire the estate of the deceased. However, if the deceased was married, the matrimonial property regime of the spouses must be first liquidated to determine whether the deceased has a debt or claim resulting thereof vis-à-vis his or her spouse. Such corresponding debt or claim of the surviving spouse will have to be taken into account in the estate of the deceased in addition to the inheritance share of the surviving spouse. Inheritance rights of the surviving spouse and registered partner will be examined hereunder.

If a house or apartment occupied by both spouses or household goods are part of the estate, the surviving spouse may request that the ownership thereof be allotted to him/her (Article 244 and 612a para. 1 CC). Alternatively, if circumstances may so justify it, at the request of the surviving spouse or the other statutory heirs of the deceased spouse, a usufruct or right of residence may be granted in lieu of ownership (Article 244 para. 2 and 612a para. 2 CC).

3. Intestacy

3.1 The system of three kinships

Statutory heirs are called upon to succeed the deceased according to the system of kinship of Germanic origin based on the natural order in which successive generations proceed from one another. A kinship is composed of all the persons linked to a common author by a bond of filiation. It consists of the descendants of a person in all degrees, including that person himself, provided he is not the deceased. Each kinship is subdivided into lines, i.e. the division of the succession by ascendants. If one of the ascendants is predeceased, he/she is represented in the succession by his/her own descendants. If there

are no descendants in one of the lines, the succession devolves to the heirs of the other line (Article 458 CC).

The closest kinship excludes the most distant kinship.

3.2 Order of preference

The first kinship is composed of the descendants of the deceased. There is no longer any difference between legitimate children (born to a married couple) and natural children (or adulterers) since the Swiss Civil Code was amended in this regard in 1976. The same applies to adopted children. It is therefore not blood ties that prevail in matters of succession but family ties in the statutory sense.

The second kinship consists of the father and mother and, in the event one of them has predeceased, the descendants of the latter.

The third kinship consists of the grandparents and, in the event that one of them has already died, the descendants of the latter.

Surviving spouses and registered partners are statutory heirs and inherit as follows (Article 462 CC):

- 1/2 of the estate, where they share the estate with the deceased's issue;
- 3/4 of the estate, where they share the estate with the father of the deceased, his mother or their descendants;
- the entire estate, in the absence of the father of the deceased, his mother or their descendants.

If there are no heirs, the succession devolves to the canton of the deceased's last domicile or to the commune designated by the legislation of that canton (Article 466 CC). If the canton, respectively the commune renounces, the succession is liquidated by the bankruptcy office.

4. Testamentary dispositions

4.1 Testamentary capacity

According to Article 467 CC, any person capable of discernment and aged 18 years or over has the right to dispose of his or her property by will or inheritance pact. The age of majority (18 years in Switzerland) is required to conclude an inheritance pact (Article 468 CC).

4.2 Types of testamentary dispositions: wills and inheritance pacts

(i) Wills

Swiss law knows three types of wills:

The oral will is a privileged will which is only allowed in exceptional circumstances, i.e. when extraordinary circumstances prevent the testator from using another form, in particular in the event of imminent danger of death, intercepted communications, epidemics or war (Article 506 CC). For an oral will to be made the testator must declare his last wishes simultaneously to two witnesses, instructing them to draw up or have drawn up an act (Article 507 paragraph 2 CC).

A holographic will is a document in which the text, date and signature are entirely handwritten by the testator (Article 505 CC). The presence of a witness is not required.

The authentic will is signed by the testator in the presence of two witnesses and before a notary or the person entitled to do so under cantonal law (Article 499 CC).

A joint will is prohibited (Articles 498 to 516 CC).

A will, whether oral, holographic or authentic, can be unilaterally revoked (Article 509 CC) either by its destruction (Article 510 CC), or by stipulation of revocation of such will in a provision of a new testamentary disposition validly made.

(ii) Inheritance agreements

Swiss law provides the possibility to make an inheritance agreement, i.e. a contract concluded between the testator and a third party (the co-contractor) in relation to the testator's succession. The inheritance agreement has the dual characteristic of binding the deceased and regulating the latter's succession.

There are two types of inheritance agreements:

- The attributive inheritance agreement is a contract by which one of the parties institutes the other as heir or legatee (Article 494 CC). This contract may be concluded with or without valuable consideration.
- The abdicative inheritance agreement is a contract by which an heir renounces all or part of his rights in the succession of his co-contractor.

In order to conclude an inheritance agreement, the person who disposes of his property must be capable of discernment and have reached the age of 18 (Article 468 CC); his co-contractor must have the capacity required by law. Thus, a minor child who is the beneficiary of an asset may accept it if he or she is capable of discernment and is not under any obligation.

All inheritance agreements must be signed in authentic form in the presence of two witnesses and the notary.

The general rule is that an inheritance agreement can be revoked by the common will of both parties only; in specific cases however a clause of an inheritance pact may be unilaterally revoked (Article 513 CC).

4.3 Invalidation of testamentary dispositions

Testamentary dispositions may be declared null and void by a court upon request by any interested heir or legatee if:

- the testator lacked testamentary capacity when he/she made the will or inheritance agreement;
- it was made under influence of mistake, fraud, threats or violence (dispositions made under the influence of mistake, fraud, threats or violence, however, become operative where the testator fails to revoke them within one year after discovering the mistake or fraud or after ceasing to be under the influence of the threats or violence);
- it is illegal or immoral or subject to an illegal or immoral condition; or
- it suffers from a defect of form.

If the testamentary dispositions are null and void because of one of the above-mentioned circumstances, an action for invalidation must be brought by the interested heir or legatee in order for the invalidity of the dispositions to be recognized. The will or inheritance agreement will not in itself be null and void. Such action must be brought before the courts within one year from the day the plaintiff learned about the will and the ground of nullity, and in any case within ten years from the date of the opening of the will. Against a defendant in bad faith the action is barred only after the lapse of thirty years if the dispositions are null and void either because of their illegal or immoral character, or because of their author's lack of capacity. There is no statute of limitation to plead nullity as a defence to an action to enforce testamentary dispositions.

4.4 Types of dispositions

Swiss law foresees only a limited number of types of dispositions a testator may take by way of a will or inheritance agreement for his/her estate. The main types of disposition are the following:

(i) Institution of heirs

The testator may by testamentary disposition appoint one or several persons to inherit the entire or part of the estate (Article 483 CC). This is referred to as an institution of heirs, the heir concerned being the instituted heir. The instituted heir can be an individual (including a statutory heir) or a legal entity. The instituted heir is, with minor exceptions, in the same legal position as the statutory heir. He/she is in particular jointly and severally liable for the debts of the testator.

(ii) Legacies

The testator may by testamentary disposition leave a legacy to a person (the legatee) without instituting him as an heir (Article 484 et seq. CC). The legatee may be a third person or an heir. In the latter case, the legacy will be added to the inheritance share of the heir. The testator may bequeath a specific item of property, a right (e.g. the usufruct in all or part of the estate), an amount of money or a fraction of

the estate (in such a case it must, however, be clear that it is a legacy as the person benefiting therefrom would otherwise be deemed to be an instituted heir). The legatee's right is limited to the delivery of the legacy (Article 484 CC). To this end, he acquires only a claim against the debtor of the legacy (i.e. the community of heirs unless specified otherwise in the testamentary dispositions of the deceased). The legatee is therefore not liable for inheritance debts. The legacy must not affect the available portion. In the case of a legacy of a specific item of property, the heir(s) who must hand over the legacy are released from such obligation if the specific item of property cannot be found in the estate of the deceased unless a contrary intention of the testator may be proved. The renunciation of a legacy benefits the person who owes it, unless the deceased person has provided otherwise (Article 577 CC).

(iii) Charges and conditions

The testator may impose charges and/or conditions on an heir (statutory or instituted) or a legatee (Article 482 CC).

A charge is an obligation to execute a specific action or to refrain from a specific action (e.g. obligation to share with other heir(s) or legatee(s) the capital gains arising out of the sale of a property, instructions regarding the use of a property, prohibition to transfer an item of property during a certain period).

A condition may be set to a testamentary disposition so that the said disposition would only become effective or, on the contrary, ceases to be effective if the condition is fulfilled.

Illegal or immoral charges and conditions render the disposition null and void. If they are meaningless or merely vexatious for third parties, they are deemed not to exist.

(iv) Substitution of an heir or legatee

The testator may stipulate a substitution of an heir or legatee (Article 487et seq. CC). Two types of substitutions should be distinguished. Under the first type of substitution the testator may appoint one or several persons to whom the inheritance shall devolve if a particular heir or legatee predeceases the testator or renounces the inheritance or legacy. Under the second type of substitution the testator may charge an instituted heir or legatee to deliver the inheritance to a third party, i.e. the reversionary heir. The time when the inheritance must be delivered to the reversionary heir may be determined by the testator. If the latter has not made any specific provisions in this regard, delivery will be deemed to have to take place upon the death of the encumbered heir. The obligation to deliver the inheritance to a third party may not again be imposed on a reversionary heir.

(v) Foundation

The testator may devote the whole or any part of the disposable portion of his/her estate (i.e. the portion of the estate which does not constitute a compulsory portion of an heir; cf. supra Nr 4.5) for some special purpose by way of a foundation (Article 493 CC).

(vi) Executor

The testator may appoint one or several persons (individuals, including heirs, or legal entity) as executors of his last will (Articles 517–518 CC). The person so appointed shall be notified of this mandate by the competent authority and must declare within 14 days of notification whether he/she accepts the mandate as executor. Silence will be taken to mean consent. Unless otherwise provided by the testator, the executor shall be in charge of administering the estate, paying the debts of the testator, handing over the legacies and carrying out the division of the estate according to the testamentary dispositions of the testator (if such valid dispositions exists) or according to the law.

4.5 Freedom of disposition of the testator – restrictions imposed by the compulsory portion

(i) Heirs entitled to a compulsory portion

The descendants, the surviving spouse or registered partner and, if there are no descendants, the parents of the deceased are entitled to a compulsory portion of the estate. The deceased must respect these compulsory portions and is free to dispose of his/her estate up to the disposable portion only. The compulsory portions amount (art. 471 CC):

- for descendants, to three quarters of their intestate share;
- for the surviving spouse or registered partner to one half/his or her intestate share; and
- for the father or mother, to one half/his or her intestate share.

An heir, may however, renounce to all or part of his or her compulsory portion with or without monetary compensation by way of inheritance agreement concluded with the testator (cf. infra Nr 4.2).

Also if by a testamentary disposition one of the spouses leaves to his/her surviving spouse the usufruct on the totality of the share devolving to their common children, this usufruct then replaces the compulsory portion of the surviving spouse (Article 473 CC). The surviving spouse may, in this case, also benefit from the disposable portion, which corresponds under current law to one quarter of the succession and will be increased to one half as of January 1rst, 2023.

A revision of the inheritance law provisions of the Swiss Civil Code has recently been approved by the Swiss Parliament. Under this revision the compulsory portion of descendants is to be reduced from three quarters to one half of their intestate share and the compulsory portions of parents is cancelled entirely. This revision will come into force on January 1rst, 2023.

Compulsory portions under the present law and under the revision can thus be summarized as follows:

Case	Intestate Share	Compulsory Portion (currently)	Disposable Portion (currently)	Compulsory Portion (Revision)	Disposable Portion (Revision)
Surv. Spouse/Partner only	1	½ of 1 = ½	½	½ of 1= ½	½
Descendants and Surv. Spouse/Partner	½ ½	¾ of ½ =⅜ ½ of ½ = ¼	 ⅜	½ of ½ = ¼ ½ of ½ = ¼	 ½
Descendants only	1	¾ of 1 = ¾	¼	½ of 1= ½	½
Parents And Surv. Spouse/Partner	¼ (2 x ⅛) ¾	½ of ¼ = ⅛ (2x 1/16) ½ of ¾ = ⅜	 ½	- ½ of ¾ = ⅜	 ⅝
Parents only	1 (2 x ½)	½ of 1 = ½ (2 x ¼)	½	-	1

(ii) Calculation of compulsory portions

Compulsory portions are calculated on the following mass of assets:

	Assets of the estate existing at time of death of deceased
+	Assets subject to hotchpot [cf. supra Nr 5]
-	Debts of the deceased
-	Debts of the estate
+	Assets subject to reduction [cf. supra (iii)]
	Mass of assets on which compulsory portions are calculated

Inter vivos dispositions which may be reduced (cf. supra (iii)) will be added to the assets of the estate of the deceased at their value as of the date of death to calculate the amount of the compulsory portions of heirs who have a right to it.

(iii) Reduction of testamentary dispositions and inter vivos dispositions

Reduction is the sanction provided by Swiss law to dispositions infringing the compulsory portion of an heir: an heir who would not receive his/her compulsory portion may make a claim that the *inter vivos* or testamentary disposition which infringes his/her compulsory portion in excess of the disposable portion be reduced to the permitted amount.

This applies to all testamentary dispositions taken in excess of the disposable portion. It also applies to *inter vivos* dispositions, but in certain cases only. Such cases in particular include all gifts, with the exception of customary gifts, made by the deceased in the last five years prior to his/her death, as well as alienations made by the deceased with the obvious intent to evade the restrictions concerning compulsory portions.

The claim for reduction must be made within one year from the day the heir has received knowledge of such infringement, and in any case within ten years from the opening of the will or inheritance agreement in respect of testamentary dispositions, and from the death of the donor in respect of *inter vivos* dispositions (Article 533 CC). There is no statute of limitation to raise reduction by way of an exception.

Insofar as the existing assets are not sufficient to cover the compulsory portions, the beneficiaries of *inter vivos* dispositions will be called upon to pay into the succession a value sufficient to replenish the said compulsory portions (Articles 522 to 533 CC).

(iii) Disinheritance

The testator may fully deprive an heir of his/her compulsory portion only in two exceptional cases (Article 477 CC), i.e.

- if the heir has committed a serious criminal offence against the testator or a person closely related to him/her; or
- if the heir has seriously infringed his/her obligations imposed by family law towards the testator or his/her family.

If an unpaid debt certificate exists against a descendant of the testator, the latter may deprive the said descendant of half of his/her compulsory portion, provided that half devolves to the children born or subsequently born of the said descendant (Article 480 CC).

Unless the testator provides otherwise, the share of the disinherited heir devolves to the latter's statutory heirs as if the disinherited heir had not survived the testator. In any case, the descendants of the disinherited heir have a right to receive their compulsory portion as if the disinherited heir had not survived the testator.

The grounds for disinheritance must be stated in the will in order for the disinheritance to be valid (art. 479 CC). If an action is brought by the disinherited heir against the validity of the disinheritance, the heir or legatee who benefits from the disinheritance must prove the validity of the ground given by the testator in his/her testamentary dispositions. If no ground has been given by the testator or if the heir or legatee benefiting from the disinheritance fails to prove the validity of the ground, the disinherited heir may, by a claim for reduction, request payment of his/her compulsory portion.

4.6 The Register of Wills

The original or a copy of the testamentary dispositions must be kept by the public officer who received them. Thus, a holographic will may be handed over to a public officer who shall keep it.

The Swiss Federation of Notaries has set up a Central Register of Wills located in Bern ("RCT"), in order to offer the possibility to all official depositories of wills in Switzerland to announce the wills they hold. The purpose of this register is to alleviate information problems both nationally and internationally, which however presupposes that, for each death, the authority addresses a request to the RCT. Some cantons have imposed the obligation to use this institution.

In practice registration becomes the rule unless the testator expressly requests the notary not to proceed with registration.

5. Hotchpot

Hotchpot consists in the taking into account of certain gifts made by the deceased during his/her lifetime to "future" heirs when calculating the share in the estate of such "future" heirs. In principle only statutory heirs may incur an obligation to bring gifts into hotchpot. In certain cases, instituted heirs may, however, be subject to hotchpot, in particular if the testator so provides.

Hotchpot is to be distinguished from reduction. Reduction aims at the protection of the compulsory portion of an heir; hotchpot aims to respect the intentions of the deceased. If the intention of the deceased was to favour one heir over another (always subject to compulsory portions), the gift will not need to be brought into hotchpot and thus will not be taken into account when calculating the share of the heir. If the gift was meant as an advancement to the heir on his/her share in the estate it will have to be brought into hotchpot.

As the intention of the deceased is sometimes difficult to determine, the law provides certain presumptions (Articles 626 et seq. CC).

The Swiss Civil Code provides that gifts subject to hotchpot are taken into account at their value at the date of the opening of the succession (i.e. the date of death of the deceased) or, where the donee has

already sold what he/she received before that date, at the price at which it was sold. Legal authors agree that this provision is not mandatory so that the testator may provide otherwise.

The general principle is that the market value will be relevant. For gifts made in cash, the nominal value is, however, relevant.

The heir can choose between actually bringing the property received as a gift back into hotchpot or keeping it and having his/her share in the estate reduced accordingly.

6. Division

Participation of all heirs is necessary for the division of the estate to take place. The general principle is that the heirs decide freely the moment and mode of division of the estate.

With regard to the timing of the division of the estate, it is not necessary that division of the estate be done in one act alone. Partial division of the estate can also take place, i.e. part of the assets may be divided between the heirs prior to the final division or certain heirs may receive their share of the estate while other heirs remain in the community of heirs until final division. If no agreement can be reached, an heir may at any time request the division of the estate unless he/she is expressly bound by agreement or by law (e.g. the Swiss Civil Code provides that division must be delayed until birth of an unborn child-heir) to continue the community of property.

The testator may provide rules for division of his/her estate by testamentary disposition. Each heir may request that these rules be followed. However, heirs may by unanimous agreement decide not to follow such rules.

If an executor has been designated by the testator (cf. infra Nr 4.4(vi)) it will, unless otherwise specified by the testator, be for him to prepare the division of the estate and in particular make a proposition to the heirs for the division of the estate.

In the absence of agreement amongst the heirs, the rules provided by the Swiss Civil Code apply. These rules include the following:

- In the absence of contrary dispositions, all heirs have an equal right to the items of the estate.
- An item of the estate, the value of which would be substantially reduced by division, shall be allotted in its entirety to one heir.
- If the heirs cannot reach agreement on the division or allotment of an item of the estate, it shall be sold and the proceeds distributed.
- If a house or apartment occupied by both spouses or household goods are part of the estate, the surviving spouse may request that the ownership thereof be allotted to him/her on account of his/her position.

The division shall be final either upon formation and acceptance of the shares or with the conclusion of a division contract which, in order to be valid, must be in writing.

If the heirs cannot reach agreement, any heir can make a claim at any time to the competent authority for division of the estate.

7. Trusts

There is at present no domestic law on trusts in Switzerland. However, as a result of the ratification by Switzerland of the Hague Convention on the Law Applicable to Trusts and on their Recognition of July 1rst, 1985, foreign trusts properly constituted are recognized in Switzerland.

At present, there are no specific Swiss tax provisions on the taxation of (foreign) trusts. The principles governing the taxation of trusts are however laid down in a non-binding Circular Letter of the Swiss Tax Conference (later adopted by the Swiss Federal Tax Administration) followed by many cantons. In principle, the trust itself and the trustees have not been subject to taxation in respect of the trust, but the beneficiaries and/or the settlor of the trust, if resident in Switzerland, can be subject to taxation. Great care should therefore be taken when drafting a trust deed where the settlor or beneficiaries of a trust are or will become resident in Switzerland. It will be prudent to obtain a tax ruling from the competent cantonal tax authorities to determine the tax treatment in advance.

A draft bill published on January 12, 2022 by the Swiss Federal Council intends to introduce trusts as a new statutory institution into Swiss law. The draft bill is now subject to consultation and will then be discussed by the Swiss Parliament. To come into force it must be approved by the Swiss Parliament.

8. Inheritance tax in a nutshell

Inheritance (and gift) taxes are levied only by the cantons and not by the Confederation. The cantons may allow the communes to levy such a tax. However, in most cases, the communes can only participate in the proceeds of the cantonal tax. In view of the large number of laws that may apply, only a general overview will be provided hereunder.

Inheritance tax is levied by almost all cantons. Only the cantons of Schwytz and Obwald do not make use of such right. The same applies to gift tax, except that the canton of Lucerne distinguishes between inheritance tax and gift tax: while the former is levied, the latter is only partially levied, and only for donations made within five years of the donor's death.

Inheritance tax is levied on all transfers of assets to statutory and instituted heirs and legatees. Inheritance tax is levied on the share of each heir or legatee and can therefore be calculated according to the amount of the share. This has the advantage that it can be staggered according to the degree of kinship at any time, adjusted progressively according to the size of the share or according to other personal criteria. With the exception of the canton of Grison (which only has an inheritance tax) and, as mentioned above, Schwytz and Obwald, all cantons use this system of inheritance tax (optional communal tax). A succession tax (i.e. on the entire succession of a deceased person before division) is levied in addition to the inheritance tax in the canton of Soleure, and

instead of the latter in the canton of Grison, where the communes may, however, also levy an inheritance tax.

Inheritance tax is generally levied at the place where the succession was opened, which according to Article 538 CC is the last domicile of the deceased. The legislator has given, in Article 3 para 2 of the law on direct federal tax a definition independent of that used in civil law: *"A person is domiciled in Switzerland for tax purposes when he resides there with the intention of settling there permanently or when he* has *a special statutory domicile there under federal law"*. This definition is to be taken over by the cantons in accordance with the law on the harmonisation of direct taxes which takes over this definition by replacing the word "Switzerland" with the word "canton". Thus, it can be said that tax law bases the concept of domicile on two conditions: one objective, namely the existence of a residence, and the other subjective, namely the intention to settle with a certain stability.

In principle, movable property can only be taxed if the last domicile of the deceased was in Switzerland. Some international conventions for the avoidance of double taxation provide that movable property is taxed at the place where it is actually located at the time of death.

Real estate assets are taxed in the canton where the real estate is located. Only real estate located in Switzerland is taxed in Switzerland, as a general rule, if the *deceased* had his last domicile abroad. The cantonal legislations provide that real estate or parts of real estate located on their respective territories or that the real rights encumbering the said real estate are subject to inheritance tax regardless of the place where the succession is opened.

The tax is levied on the net assets of the succession. The assets subject to tax are usually assessed at their market value at the time of death. In principle, the cantons base their valuation on the principles of wealth tax. Life insurance benefits are subject to a valuation that may differ from one canton to another.

In a very schematic way and with a very relative precision, the inheritance tax rates vary according to the cantons as follows:

- from 0 to 7% for spouses and direct descendants
- from 10% to 23% between brothers and sisters
- from 15% to 27%, between uncles or aunts
- from 20% to 33% between great uncles or great aunts and nephews, nieces, grand-nephews and grand-nieces
- from 25% to 54% for inheritance tax for more distantly related or unrelated beneficiaries.

It should be noted that the cantons of Tessin, Geneva, Argovie, Nidwald, Appenzell Rhodes-Extérieures, Appenzell Rhodes-Intérieures and Thurgovie (in certain cases) provide different forms of joint and several liability of the executor and the possible official administrator of the succession with the heirs and legatees for the payment of the inheritance tax.

In Switzerland, nationality is not a criterion for tax liability. However, it may play a role when a Swiss citizen requires the intervention of the authorities of his or her canton of origin for the settlement of his or her succession. It may also be of some importance for foreigners who have not been gainfully employed in Switzerland by granting them, for example, a reduction of half of the tax due as provided in the Vaud law on inheritance tax (Article 36 LMSD). The notion of nationality also plays an important role in certain international treaties (e.g. in the treaty between the Swiss Confederation and the United States of America for the avoidance of double taxation in the field of inheritance tax and inheritance shares).

When the assets of an international succession are taxed in several countries, the debts are generally distributed in proportion to the distribution of the assets.

Most Swiss cantons apply the global rate method: this means that the rate is set according to all the net assets of the succession whatever they are and wherever they are located.

Article 127 para 3 of the Constitution prohibits intercantonal double taxation. On the other hand, this article does not apply to international matters: this implies that double taxation is not prohibited a priori. It is only abolished or limited if a treaty exists between Switzerland and a foreign country; fortunately, many cantonal laws provide for the mitigation of double taxation allowing in the event of effective double taxation the deduction of inheritance tax paid abroad from the gross assets of a succession taxable in Switzerland.

Switzerland has concluded international treaties for the avoidance of double taxation on inheritance with Germany (30 November 1978), Austria (30 January 1974), Denmark (23 November 1973), the United States (9 July 1951), Finland (27 December 1956), Norway (7 December 1956), the Netherlands (12 November 1951), the United Kingdom (17 December 1993) and Sweden (7 February 1979).

It is important to remember that these international treaties only apply to inheritance taxes, excluding transfer and gift taxes. These treaties generally granted to the country of the last domicile of the deceased or of the location of the transferred assets the right to tax.