

The new forced heirship rules of Swiss law

On 18 December 2020, the Federal Parliament voted to revise the inheritance law rules of the Swiss civil code, which essentially date from the beginning of the 20th century. The main objective of the new rules, which will come into force on 1st January 2023, is to give people more freedom to dispose of their assets upon their death. We will briefly present the new forced heirship rules while outlining a number of general points which remain unchanged.

Unlike the Anglo-Saxon countries, European countries are familiar with the concept of forced heirship and “compulsory portions”. This is the portion of an estate which the deceased cannot dispose of freely and of which the entitled heirs cannot be deprived, except in the case of disinheritance. The

part of the estate which the deceased may dispose of freely is known as the “devisable portion”. The essential aims of this institution are to guarantee that a portion of the estate remains in the family and to ensure a certain equality between the heirs.

Before discussing the new rules, some preliminary remarks are in order.

First, the surviving spouse may already receive a significant part of the family assets when the matrimonial regime is liquidated. This share will obviously depend on the matrimonial regime chosen by the spouses.

Secondly, the only way for an entitled heir to renounce his compulsory portion is to do so in an in-



Comparison of forced heirship rules under current and new law

Heirs	Current law		New law	
	Compulsory share	Devisable share	Compulsory share	Devisable share
Descendants	3/4	1/4	1/2	1/2
Spouse	1/2	1/2	1/2	1/2
Mother, Father	1/2	1/2	0	Total
Brother, Sister	0	Total	0	Total
Descendants and spouse	3/8 et 2/8	3/8	2/8 et 2/8	4/8
Mother/Father and Spouse	1/8 et 3/8	4/8	0 et 3/8	5/8
Brother/Sister and Spouse	0 et 3/8	5/8	0 et 3/8	5/8

heritance contract. However, if the deceased has drawn up a will which does not comply with the forced heirship rules, it is neither automatically null and void, nor automatically corrected. It is up to the affected heir to lodge an action in abatement.

Finally, without going into detail, the mass of assets to be divided between heirs should not be confused with the mass for calculating the compulsory shares of entitled heirs. This question is particularly important if the deceased has made inter vivos gifts to his heirs which he declared non-returnable upon death. These gifts will not be taken into account in the mass of assets to be divided between heirs. They will however be included in the mass to calculate the compulsory shares of the entitled heirs. As can be seen from the diagram below, the size of the compulsory portions of the heirs depend on which heirs are present.

The main features of the new law are the removal of the compulsory portion of the father and mother, the reduction of the compulsory share of the descendants and the continuation of the compulsory share of the surviving spouse or registered partner. Three examples will be used to illustrate these changes. Under the current law, if a person dies while unmarried but with two children, the children's compulsory portion is 3/4, which they share equally between them, whereas under the new law it will be 1/2, which they will also share equally. If a married person without children dies while his or her parents are still alive, the latter's compulsory share is currently 1/8 and that of the surviving spouse 3/8. In the future, the surviving spouse's share will still be 3/8, but the father and mother will no longer be entitled to a share of the estate. Finally, when a married couple dies with two children under the current law, the children's

compulsory portion, which they share equally between themselves, is 3/8 and that of the surviving spouse is 2/8. From 1st January 2023, the children's share will be reduced to 2/8, which they will also share equally, and that of the surviving spouse will be maintained at 2/8. As a result, in this last example, the deceased will be able to dispose of 3/8 according to the current law, and 4/8 according to the new law.

Among the new rules that will come into force on 1st January 2023, we will mention those specifying that the surviving spouse will in the future lose his or her right to a compulsory portion if at the time of death divorce proceedings were pending and if the proceedings had been initiated by joint petition or continued in accordance with the provisions relating to divorce by joint petition, or if the spouses had lived apart for at least two years. In such a case, the compulsory shares of the other heirs will be calculated as if the deceased had not been married. These rules will apply mutatis mutandis to the procedure for the dissolution of a registered partnership.

The entry into force of these new rules should be an opportunity for readers to consider estate planning for those who have not yet done so and for those who have already put such planning in place to ensure that it still complies with the new rules which will apply to all estates opened after 1st January 2023. ■