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Revision and modernization of Swiss inheritance law

I. INTRODUCTION

The Swiss inheritance law currently applicable was adopted in 1912 and only minor adjustments have been made since then.

In 2010, several parliament's members have filed a motion requesting the Federal Council to modernize the Swiss inheritance law to take into account changes in family structures.

The Federal Council has addressed in 2018 to the Swiss Parliament a draft bill revising the inheritance law. The revision aims to give testators more freedom when planning their estates given the modern families structures which drift away from the traditional family model.

The Parliament has adopted a new bill regarding Swiss inheritance law on December 18, 2020. This new legislation will enter into force on January 1, 2023.

It is worth mentioning that a separate revision of Swiss inheritance law – which is under progress but less advanced – also aims at facilitating the succession of family businesses. This subject is briefly addressed in the present contribution.

II. PROTECTED SHARES

Current law: children, spouses and in certain situations parents are all legally entitled to a protected share of the deceased's estate. This protected share is mandatory and may not be reduced by a testator. The current inheritance law requires that the descendants receive $\frac{3}{4}$ of their statutory share of inheritance (succession rights). The protected share of each parents as well as of the surviving spouse or registered partner amounts to $\frac{1}{2}$ of their statutory succession rights.

Examples:

If the deceased has only descendants, the protected share of the descendants is $\frac{3}{4}$ of the estate. The disposable part of the estate is 25%.

If the deceased has descendants and a surviving spouse, the protected share of the descendants is $\frac{3}{8}$ ($\frac{1}{2} \times \frac{3}{4}$) and the protected share of the surviving spouse is $\frac{1}{4}$ ($\frac{1}{2} \times \frac{1}{2}$). The disposable part of the estate is 37,5%.

If the deceased has a surviving spouse and a surviving parent but no descendants, the spouse has a protected share of $\frac{3}{8}$ ($\frac{3}{4} \times \frac{1}{2}$) of the estate and the surviving parent of $\frac{1}{8}$ ($\frac{1}{4} \times \frac{1}{2}$). The disposable part of the estate is 50%.

If the deceased only has a surviving parent, the protected share of the surviving parent is 1/2. The disposable part of the estate is 50%.

Revised law: parents are no longer entitled to a protected share of the deceased's estate. The protected share of the descendants is reduced from 3/4 to 1/2 of their statutory succession rights. The spouse or the registered partner's protected share of 1/2 remains unchanged.

Examples:

If the deceased has only descendants, the descendants are statutory entitled to 1/2 of the estate. The disposable part of the estate is 50%.

If the deceased has descendants and a surviving spouse, the protected share of the descendants is 1/4 ($1/2 \times 1/2$) and the protected share of the surviving spouse is 1/4 ($1/2 \times 1/2$). The disposable part of the estate is 50%.

If the deceased has a surviving spouse and a surviving parent but no descendants, the spouse has a protected share of 3/8 ($3/4 \times 1/2$) of the estate. The surviving parent has no protected share of the estate. The disposable part of the estate is 62,5%.

If the deceased only has a surviving parent, there is no protected share. The disposable part of the estate is 100%

Consequence: the reduction of the protected shares increases the disposable part of the estate and the testator's freedom to dispose of his estate, notably in favor of individuals who are not under the benefit of statutory protected shares (unmarried partners, stepchildren, etc.).

III. DIVORCE PROCEEDINGS | DISSOLUTION OF THE REGISTERED PARTNERSHIP

Current law: divorced spouses have no rights of inheritance in relation to each other. However, a spouse is entitled to its protected share as long as a divorce judgment has not been rendered. The same rules are applicable for registered partners.

Revised law: if a spouse dies during divorce proceedings, the surviving spouse is not anymore entitled to the protected share if (i) the proceedings were initiated by a joint request of the spouses or (ii) the spouses have lived two years separately at the time of death. The spouse however remains

a legal heir of the deceased until the divorce is formally pronounced. The same rules are applicable for registered partners.

Consequence: the revised law also increases the disposable part of the estate when divorce proceedings are pending.

IV. RIGHT OF USUFRUCT

Current law: the testator may grant the surviving spouse an usufruct of the entire part of the estate to be inherited by their common descendants. The usufruct allows to maintain the living conditions of the surviving spouse and to avoid that the estate has to be shared between the surviving spouse and the common descendants. The right of usufruct allows the surviving spouse to use the assets due to be inherited by the common descendants and replaces the statutory succession right due to the spouse. In addition to this usufruct, the disposable part is 1/4 of the estate.

Revised law: the right of usufruct may not only be granted to the surviving spouse but also to the surviving partner of registered partners who have common descendants. In addition to the usufruct, the disposable part is increased to 1/2 of the estate.

Consequence: with the revision, the surviving spouse may receive by will the property of half of the succession and a right of usufruct on the other half. The revised law increases the disposable part of the estate.

V. CONCLUSION

The changes will give testators more freedom by increasing the disposable part of the estate.

Since the new regulations do not contain any transitional rules, it is important to anticipate and to check if the testamentary dispositions made by testators are in compliance with the new law and match their last wishes.

The new inheritance law has not gone so far as enabling partners neither married nor registered to inherit from their partner. Unmarried couples and couples who are not living in a registered partnership are therefore advised to actively manage the devolution of their estate if they want their de facto life partners to inherit the disposable part of the estate.

VI. EXCURSUS | SUCCESSION PERTAINING TO FAMILY BUSINESSES

By a separate revision of inheritance law, the Federal Council aims to facilitate the transfer of family businesses by way of succession.

The project includes the following rules: (1) the descendants will have a right to inherit of the entire business, even if the deceased's will does not contain any provisions in this respect, to avoid fragmentation and/or closure of the business (2) the descendant taking over the family business will benefit from payment delays regarding debts to other descendants in order to avoid liquidity issues (3) specific rules will be applicable to the valuation of the family business in order to take into account the entrepreneurial risk of the descendant taking over the business and (4) the protected shares of the descendants who are not taking over the family business will be protected by excluding that such shares are attributed in the form of a minority share of the family business taken over by another descendant.

The Federal Council's proposals have received positive feedback during the consultation process but remain subject to some changes. The draft bill is expected to be submitted to the Parliament in the following months.

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