

## Succession Law and Probate in Cyprus

September 2003

### A. General Information

#### 1. Legislation

The regulation of the devolution of a person's estate on his death, whether by will or on intestacy, and the execution of wills and administration of estates are dealt with under Cyprus Law by the Wills and Succession Law, Cap. 195 and the Administration of Estates Law, Cap. 189 respectively. The section of Cap. 195 dealing with wills is drawn largely from the English Wills Act of 1837 whereas the section dealing with intestacy is based on the Italian Civil Code.

#### 2. Domicile

The question of domicile is an important one to establish since Cap. 195 expressly regulates

- The succession to the estate of all persons domiciled in Cyprus;
- and
- The succession to the immoveable property of all persons not domiciled in Cyprus.

This essentially means that Cap. 195 is applicable to cases of succession of moveable property of a person who at the time of his death had his domicile in Cyprus, and to cases of succession to immoveable property situated in Cyprus of any person irrespective of whether at the time of his death his domicile was in Cyprus.

This renders the question of domicile a prerequisite to establishing whether the provisions of Cap. 195 will apply to the case at hand.

According to Cap. 195 every person has at any given time either the domicile received by him at his birth (domicile of origin) or a domicile acquired or retained by him by his own act (domicile of choice).

In order to acquire a domicile of choice, a person must establish physical residence in a place and demonstrate sufficient intention of making that place his permanent home. The domicile of origin prevails and is retained until a domicile of choice is, in fact, acquired, and a domicile of choice is retained until it is abandoned whereupon either a new domicile of choice is acquired or the domicile of origin is resumed. For the purposes of succession to moveable property, no person can have more than one domicile.

### B. Wills

#### 1. Wills: General

A will is defined as the legal declaration in writing of the intentions of a testator with respect to the disposal of his moveable property or immoveable property after his death and includes codicil. The will, apart from its main function of disposing of the estate of the deceased or at least such part of it

as is free to testamentary disposition, may include other important provisions such as pardoning a person otherwise incapacitated to succeed or recognising an illegitimate child.

## **2. Capacity to Make Wills**

Every person who is of sound mind, memory and understanding and who has completed the age of 18 may make a valid will thereby disposing of the whole or any part of the disposable portion of his estate.

## **3. Formalities of a Will**

A will must be in writing and must be executed in the following manner:

- It must be signed at the foot or end thereof by the testator or some other person on his behalf, in his presence and by his direction;
- Such signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time;
- Such witnesses must attest and must subscribe the will in the presence of the testator and in the presence of each other, but no form of attestation will be necessary; and
- If the will consists of more than one sheet of paper each sheet must be signed or initialled by or on behalf of the testator and the witnesses.

Strict adherence to the formalities mentioned above is mandatory and must be complied with rigidly otherwise the will shall be rendered void.

## **4. The Disposable Portion of the Will**

Many legal systems, including that of Cyprus, impose restrictions on the freedom of the testator to dispose of his estate so that such estate, devolves to the greater part, to members of the testator's family. The disposable portion of the estate refers to that part of the moveable and immoveable property of a person which he can dispose of freely by will.

The law expressly provides that where a person dies leaving a spouse and a child or a spouse and a descendant of a child, or no spouse but a child or a descendant of a child, the disposable portion of the estate shall not exceed one quarter of the net value of the estate. Where the deceased leaves a spouse or a father or a mother, but no child or descendant of a child, the disposable portion extends to one half of the net value of his estate. Where the deceased leaves neither spouse, nor child nor descendant of a child, nor a father nor a mother, the disposable portion shall be the whole of the estate.

Where the testator purports to dispose by will of a part of his estate in excess of the disposable portion, such disposition shall be reduced and abated proportionally so as to be limited to the disposable portion.

The reduction and abatement provided for shall not apply where the testator disposes of up to the whole of his estate to his surviving spouse, provided that he leaves a spouse but no children or descendants of a child, or father or mother.

#### **5. Rights of Surviving Spouse and Succession**

The surviving spouse is entitled to a share in the statutory portion if any, (after any debts and liabilities of the estate have been discharged), as follo (the part of the estate which a person may not dispose of freely by will), and in the undisposed portion was, where the deceased leaves behind, apart from the spouse:

- A child or descendant of a child, such share is equal to the share of each child;
- No child nor descendant thereof, but any ancestor or descendant thereof within the third degree of kindred to the deceased, such share shall be the one-half of the statutory portion and of the undisposed portion;
- No child nor descendant thereof, nor any ancestor or descendant thereof within the third
- degree of kindred to the deceased, but any ancestor or descendant thereof of the fourth degree of kindred to the deceased, such share shall be the three-fourths of the statutory portion and of the undisposed portion;
- No child nor descendant thereof nor any ancestor or descendant thereof within the fourth degree of kindred to the deceased, such share shall be the whole statutory portion and the whole undisposed portion.

The law makes a further provision with regard to property received under marriage contract, a marriage contract being defined as a contract in contemplation or in consideration of marriage. The relevant section provides that a spouse who becomes entitled to a share in the statutory portion or in the undisposed portion of the estate of the deceased, will not bring into account in reckoning such share any moveable or immovable property received from the deceased by virtue of a marriage contract.

#### **6. Contribution**

The Law makes provision as to the property to be taken into account in reckoning the share of a child or of another descendant of deceased. The relevant section provides that any child or other descendant of the deceased who becomes entitled to succeed to the statutory portion, and to the undisposed portion if any, shall in reckoning his share bring into account all moveable property that he has at any time received from the deceased-

- (a) by way of advancement; or
- (b) under a marriage contract; or

(c) as dower; or

(d) by way of gift made in contemplation of death:

However, where the deceased has left a will and has made therein specific provision that such moveable property or immovable property shall not be brought into account, then the deceased's wishes shall be complied with.

### **7. Revocation of Wills**

A will may be revoked either by a subsequent will expressly revoking the former one; or by a subsequent will inconsistent with the provisions of the former one, (but only so far as the provisions of the two wills are inconsistent); or by burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction, with the intention of revoking it.

There are certain circumstances whereby a will shall be deemed to be revoked and, in all cases, to effect a revocation there must also be an intention to revoke (*animus revocandi*). A will shall be deemed to be revoked by the marriage of the testator after the execution of the will or by the birth of a child to the testator after the execution of the will, if at the making of the will the testator had no children, with the proviso that such marriage or birth shall not be deemed to revoke a will if it appears upon the face of the will that the will was made in contemplation of such marriage or birth.

Once the will is revoked, no will or any part thereof shall be revived unless it is re-executed in the manner provided by the Law and on proof of intention of the testator to revive same. Where a will which is partly and then wholly revoked is revived, such revival shall not extend to the part revoked before the revocation of the whole, unless an intention to the contrary shall be shown.

## **C. Succession of the Kindred**

### **1. Succession**

The First Schedule (See Annex, part 1), headed "Succession of the Kindred" divides the heirs of the deceased into four classes, places them according to degree of proximity of relationship to the deceased and sets out the shares in which the heirs of each class are entitled to succeed to the estate.

In general terms, the heirs of each class succeed equally but in the first and second classes it is per stripes, whereas in the third and fourth classes, it is per capita ("per stripes" meaning that the child of any person of the defined class who shall have died in the lifetime of the deceased and who, if he had survived the deceased, would have become entitled on the death of the deceased to a share in the statutory portion, and the undisposed portion if any, shall become entitled only to the share which the parent would have taken if he had survived the deceased).

### **2. Degrees of Kindred**

The degrees of kindred up to sixth degree are depicted in the table of the Second Schedule (See Annex, part 2). Cap. 195 provides that the degree of kindred between any two persons shall be

ascertained as follows, that is to say, when two persons are in the direct line of descent the one from the other, by reckoning the number of generations from either of them to the other, each generation constituting a degree; and where they are not in the direct line of descent the one from the other, by reckoning the number of generations from either of them up to their common ancestor and from the common ancestor downwards to the other of them, each generation constituting a degree.

Where the deceased leaves no spouse and no kin living at his death within the sixth degree of kindred he will be taken to have died without heirs and the undisposed portion of his estate will become the property of the Republic of Cyprus.

The Law makes a further proviso that any person who, by virtue of the will of the deceased, becomes entitled to succeed to any part of the disposable portion, shall be in no way debarred from succeeding to any part of the statutory portion, and of the undisposed portion if any, should he be so entitled.

#### **D. Private International Law**

As stated above, resolution of the question of domicile will define the applicable law in relation to the succession to the moveable property of a person, whereas in cases of immoveable property, the *lex situs*, or law of the country in which the immoveable property is situated governs the question of succession. So, where the deceased leaves immoveable property situated in various jurisdictions, the succession to each property will be governed by the law of the jurisdiction in question. However on worldwide moveable assets, the applicable law is that of his country of domicile at the time of his death. The worldwide moveable property of a person domiciled in Cyprus, for example, will be free of inheritance tax because the Estate Duty (Amending) Law 2000 has abolished inheritance tax in as far as persons who died after 1 January 2000 are concerned.

It is important to note that the laws of Cyprus, as *lex situs*, will govern succession to the estate as far as immoveable property is concerned on matters of both procedure (validity of the will etc.) and substance, regardless of the deceased's domicile. Likewise, the *lex domicilii* will govern succession to the estate as far as moveable property is concerned again, on both procedural and substantive matters.

Each jurisdiction to which a case may be referred, will have its own set of "conflict of laws" rules. When the municipal law (the law of nationality of the deceased) in referring a case to another jurisdiction (under the doctrine of *renvoi*) refers to the *lex situs* or the *lex domicilii*, the applicable law is the domestic law of the country where the immoveable property is found or the domestic law of the country of domicile. There are cases, however, where due to the fact that the conflict of laws rule of the country to which the case was referred does not accept the principle of *renvoi*, the case is referred back to the to the country of nationality and the question which arises here is whether the applicable law is the domestic law or the conflict of laws rule of the *lex situs* or the *lex domicilii*.

The position in Cyprus, in as far as moveable property is concerned is not clear, although there has been dicta to support application of the domestic law of the relevant jurisdiction, even where the

conflict of laws rule would have referred to some other system of domestic law (Christakis Michael Christopoulou and Others v. Maria Marianthi Christopoulou and Another (1971) 1 CLR 481). As far as immovable property is concerned, where such property is not situated in Cyprus, the lex situs is not the law of the country in which the immovable property is situated but the conflict of laws rule of that country, which may refer to some other system of domestic law.

## **E. Administration of Estates**

### **1. Administration of Estates: General**

Matters dealing with the administration of estates in Cyprus are dealt with under the Administration of Estates Law, Cap. 189, the Probates (Re-Sealing) Law, Cap. 192 and the Rules made under these Laws, in conjunction with the Wills and Succession Law, Cap. 195.

### **2. Administration of Estates: General**

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### **3. Letters of Administration and Probate**

If a person dies intestate, or a person under disability or an incapable person has an interest in an estate, the court will authorise a person to administer the estate, granting thus the so-called “letters of administration” to the “administrator” of the estate. Where, for whatever reason, the testator wishes that a specific person conducts the affairs of his estate and makes such provision in his will, on proof of the will, the court will grant the administration of the estate of the deceased to that person, known as the “executor”.

The instrument in writing issued by the court declaring that the will has been duly proved and that the administration of the deceased’s estate has been granted to a specified executor is called “probate”.

### **4. Deposit, Discovery and Production of Wills**

Any person may, during his lifetime, deposit their will for safe custody with a probate registrar upon payment of the prescribed fee. Once deposited, the will may not be opened unless with the consent of the testator and in the presence of the probate registrar. Where within a reasonable time after the death of the testator (“reasonable time” not exceeding four months) no steps have been taken for the opening of the will, then the Court is empowered to take such action as it deems fit to bring the existence of the will and its contents to the notice of persons likely to be interested.

If any person possesses any paper or writing of the deceased which is or purports to be testamentary, the original of same must be delivered to the probate registrar of the court. If any such person fails to deliver same within fourteen days of receiving knowledge of the death of the deceased such person shall be liable to a fine.

## **5. Administration generally**

Cap. 189 makes provision that for the purpose of paying the funeral and testamentary expenses and all just debts of the deceased, the personal representative shall have power to sell such part of the immovable property of the deceased as may be necessary and may raise money thereon by way of mortgage or charge.

For the purpose of facilitating the distribution of the estate of a deceased person among the beneficiaries according to the law, the Court may in respect of any part of the estate order the sale, lease, mortgage, surrender or release, division or other disposition thereof, as the Court deems fit, where these actions cannot be carried out by the personal representative because of the absence of any power for that purpose vested in him.

## **5. Determination of certain matters by originating summons**

The determination of certain matters by originating summons is dealt with under Cap 189 which provides that, personal representatives, creditors, devisees, legatees or next-of-kin, or persons claiming through such creditors or beneficiaries by assignment or otherwise, may apply to the Court by originating summons for the determination, without an administration in court of the estate, of any of the following questions or matters: -

- a) any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next-of-kin, or heir-at-law;
- b) ascertainment of any class of creditors, legatees, devisees, next-of-kin, or others;
- c) furnishing of any particular accounts by the executors or administrators, and the vouching, when necessary, of such accounts;
- d) the payment into Court of any money in the hands of the executors or administrators;
- e) directing the executors or administrators to do or abstain from doing any particular act in their character as such executors or administrators;
- f) the approval of any sale, purchase, compromise, or other transaction;
- g) the determination of any question arising in the administration of the estate.

The Law further provides that any of the above-mentioned persons may, instead of proceeding by originating summons bring an action claiming that the estate of the deceased be administered in Court.

### **NOTES:**

The above is intended to provide a brief guide only. It is essential that appropriate professional advice is obtained. Our company will be glad to assist you in this respect. Please do not hesitate to contact us.