Succession

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Slovenia

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1 How is the disposition of property upon death (will, joint will, agreement on succession) drawn up?

a) Wills: A will is valid if it has been compiled in a form determined by the Inheritance Act (hereinafter: ZD) and under the conditions set out in that act.

The ZD recognises the following forms for wills: a holographic will, a will signed in the presence of witnesses, a court will, an oral will, a will compiled abroad, a will compiled on board a Slovenian vessel, a will compiled during a state of emergency or war, and an international will.

The ZD provides the following with regard to the requirements relating to the form of a will:

A holographic will is valid if the testator has written and signed it themselves (Article 63(1) of the ZD).

A testator who knows how to read and write compiles a will signed in the presence of witnesses by signing a document compiled on their behalf by another in their own hand in the presence of two witnesses and declaring before these witnesses that this is their will. The witnesses sign their names on the will itself in a postscript to the effect that they are signing as witnesses, where this postscript is not a condition validating the will (Article 64 of the ZD).

A court will may be compiled for a testator, at their request, by the judge of a competent court who first establishes the testator's identity. The testator then reads and signs the will and the judge confirms on the will that the testator read and signed it in their presence. If the testator does not know how to read the will compiled by the judge, or is unable to do so, the judge reads the will to the testator in the presence of two witnesses. The testator then signs the will in the presence of the same witnesses or places their mark thereon after declaring that this is their will. The witnesses then place their signatures on the will (Articles 65 and 66 of the ZD).

A will compiled abroad may be compiled for a citizen of the Republic of Slovenia abroad, in accordance with the provisions applying to the compiling of court wills, by a consular representative or a diplomatic representative of the Republic of Slovenia who conducts consular matters (Article 69 of the ZD).

The captain of a ship may compile a will on board a Slovenian vessel in accordance with the provisions applying to the compiling of a court will. The will ceases to be valid 30 days after the testator's return to the Republic of Slovenia (Article 70 of the ZD).

Will compiled during a state of emergency or war: during a state of emergency or war, a company commander or commander of an equivalent or higher unit, or anyone else in the presence of a commander, may compile a will

for a member of military staff in accordance with the provisions applying to the compiling of a court will. The will ceases to be valid 60 days after the end of the state of emergency or war if the testator's military service ends before or after this, or 30 days after the testator's military service has come to an end (Article 71 of the ZD).

An international will must be compiled in written form. There is no requirement for the testator to write the will in their own hand, and the will may be written in any language, by hand or in some other way. The judge of a competent court may compile an international will at the request of a testator, while for a citizen of the Republic of Slovenia abroad this may be done by a diplomatic or consular representative referred to in Article 69 of the ZD (hereinafter: authorised person). The testator must declare, in the presence of two witnesses and the authorised person, that this is their will and that the testator is aware of its contents, and sign the will in their presence or, if the testator has already signed the will, acknowledge and confirm that the signature is theirs. If the testator is unable to sign, he/she informs the authorised person of the reason. The authorised person records this on the will. The testator may, in addition to this, request that another person sign the will on their behalf. The witnesses and the authorised person append their signatures, in the testator's presence, in a postscript that states that they signed as witnesses or as the authorised person (Article 71a of the ZD). The act further provides more detail of who may act as a witness to an international will (Article 71b), the signatures and dates appended to an international will (Article 71c), the keeping of an international will (Article 71č), the cancellation of an international will (Article 71d), the confirmation of an international will (Article 71e), the confirmation that an international will is valid (Article 71f), and validity regarding the form and the formalities for signatures (Article 71g).

Oral will: a testator may swear their last will and testament orally in front of two witnesses only if exceptional circumstances mean that they are unable to compile a written will. An oral will ceases to be valid 30 days after the exceptional circumstances under which it was compiled have come to an end (Article 72 of the ZD). The act further provides more details on who may act as a witness to an oral will (Article 73), what the duties of that witness are (Article 74), undue disposition in an oral will (Article 75), the deadline for enforcing the invalidity of a will (Article 76) and proof of the existence of a will (Article 77 of the ZD).

The Notaries Act (hereinafter: ZN) also provides for a notarial will, which is a will which a notary compiles in the form of a notarial record as dictated by the testator, and a will which the testator, having first made a written declaration of their last will and testament, delivers to a notary for confirmation. A notarial will has the same legal effects as a court will (Article 46(1) of the ZN).

In addition to the above formal requirements, the capacity to make a will is also required if a will is to be valid. According to the ZD, a will may be drawn up by anyone who is capable of discernment and who has reached the age of 15 (Article 59(1) of the ZD). Where a testator compiles a will under threat, coercion or deception, or in error, that will is not valid, as the will expressed in the document does not reflect the right and true will of the testator (Article 60(1) of the ZD).

b) Joint will: The ZD makes no mention of joint wills and, since it is not one of the forms of a will provided for in law, such a will has to be regarded as invalid under Article 62 of the ZD. However, case-law only regards as invalid a will in which two people, most commonly spouses, appoint each other as heirs (this is most likely because a will of this type is very close in nature to a contract of inheritance, which is prohibited under Article 103 of the ZD), but not a will drawn up by two persons in favour of a third (see Prof. K. Zupančič, Prof. V. Žnidaršič Skubic, Dedno pravo (Inheritance law), Uradni list, 2009, pp. 127–128).

c) Contract of inheritance: Under the ZD, a contract of inheritance in which a person leaves their estate or a portion thereof to their co-signatory or to another person is invalid (Article 103); similarly, a contract on an expected inheritance or legacy (Article 104) and a contract on the content of a will (Article 105 of the ZD) are also invalid under the act.

2 Should the disposition be registered and if yes, how?

No. The act does not provide for special authentication of a will.

3 Are there restrictions on the freedom to dispose of property upon death

(e.g. reserved share)?

Yes. Necessary heirs are entitled to a portion of the estate that the testator is not permitted to dispose of (Article 26(1) of the ZD). This portion of an estate is the 'necessary share'. Necessary heirs are: the deceased person's descendants, adopted children and their descendants, parents and spouse. Since the provisions of the ZD governing the rights, obligations, limitations and status of spouses apply equally to a man and a woman who have been in a long-standing relationship without marrying, they therefore permit them to be each other's necessary heirs, but only if there are no reasons why a marriage between the two of them would have been invalid. The same applies if extra-marital or married partners are of the same sex (are partners in a registered or unregistered civil union of two men or two women). Grandfathers, grandmothers, brothers and sisters are necessary heirs only when they are permanently incapable of work and have none of the means required for sustaining a livelihood. The persons listed above are necessary heirs if they are entitled to inherit under the statutory order of inheritance (Article 25 of the ZD).

4 In the absence of a disposition of property upon death, who inherits and how much?

In such a case, inheritance proceeds as determined by law: the deceased's estate is inherited by their descendants, adopted children and their descendants, spouse, parents, adoptive parent and that person's relatives, the deceased's brothers and sisters and their descendants, and the deceased's grandfathers and grandmothers and their descendants. A man and a woman who have been in a long-standing relationship without marrying may inherit from each other as spouses, but only if there are no reasons why a marriage between the two of them would have been invalid. The same applies if extra-marital or married partners are of the same sex, i.e. are partners in a registered or unregistered civil union of two men or two women (hereinafter: civil union (partnerska zveza)). These persons inherit in accordance with the order of inheritance, where the heirs from the closer order of inheritance exclude from inheritance persons from a more distant order of inheritance (Article 10 of the ZD).

First order of inheritance:

The deceased person's descendants and spouse, as well as extra-marital partner or partner from a civil union, are in the first order of inheritance, and inherit equal shares before all others (Article 11 of the ZD).

On the basis of per stirpes distribution, the part of the estate that would initially have gone to a person if they had outlived the deceased is inherited by their children (the deceased's grandchildren) in equal shares. If any of the grandchildren die before the deceased, the share that would have gone to them had they been alive when the deceased died is inherited by that grandchild's children (the deceased's great-grandchildren), in equal shares. This continues in the order down to the last of the deceased's descendants (Article 12 of the ZD).

If the deceased's spouse or extra-marital partner or a partner from a civil union does not have the necessary means for sustaining a livelihood and inherits along with other heirs of the first order of inheritance, the court may, at the partner's request, decide that the spouse or extra-marital partner or partner from a civil union is also to inherit a part of that portion of the estate that was, according to the law, to be inherited by the spouse's co-heirs. The spouse or extra-marital partner or partner from a civil union may request an increase in their share of the inheritance against all or individual co-heirs. The court may decide that the spouse or extra-marital partner or partner from a civil union is to inherit the entire estate if the value of that estate is so small that the spouse would suffer hardship were it to be divided (Article 13(1) of the ZD).

If other heirs of the first order of inheritance who do not have the necessary means for sustaining a livelihood inherit along with the deceased's spouse or extra-marital partner or partner from a civil union, the court may, at their request, decide that they are also to inherit a part of that portion of the estate that was, according to the law, to be inherited by the spouse or extra-marital partner or partner from a civil union. All or individual co-heirs may request an increase in their inheritance share to the detriment of the spouse or extra-marital partner or partner from a civil union (Article 13(2) of the ZD).

Individual co-heirs who do not have the necessary means for sustaining a livelihood may also request an increase in their inheritance share to the detriment of other co-heirs (Article 13(3) of the ZD).

The court may decide that all or individual co-heirs are to inherit the entire estate if the value of that estate is so small that they would suffer hardship were it to be divided (Article 13(4) of the ZD).

In deciding on the above requests regarding an increase or reduction in inheritance share, the court pays due regard to all the circumstances of the case, particularly the co-heirs' pecuniary conditions and ability to engage in gainful activity, and the value of the estate (Article 13(5) of the ZD).

Second order of inheritance:

In the second order of inheritance, the estate of a deceased person with no living descendants is inherited by their parents and spouse or extra-marital partner or partner from a civil union. The deceased person's parents inherit equal shares of one half of the estate and their spouse or extra-marital partner or partner from a civil union inherits the other half. If the deceased person has no living spouse or extra-marital partner or partner from a civil union, the deceased's parents inherit equal shares of the entire estate (Article 14 of the ZD).

If either of the deceased's parents pre-decease that person, the portion of the estate that would have gone to that parent had they survived the deceased is inherited, on the basis of per stirpes distribution, by that parent's children (i.e. the deceased's brothers and sisters), that parent's grandchildren and great-grandchildren and further descendants, under the rules applying to cases where children and other descendants inherit the estate of a deceased person (Article 15(1)).

If both the deceased's parents pre-decease that person, that portion of the estate that would have gone to each of them had they outlived the deceased is inherited by their descendants: the father's share by the father's descendants and the mother's share by the mother's descendants. In all cases, the deceased's half-brothers and half-sisters by the father inherit equal shares of the father's portion of the estate, the half-brothers and half-sisters by the mother inherit equal shares of the mother's portion of the estate, while the full brothers and sisters inherit the father's share in equal shares with the half-brothers and half-sisters by the father and the half-brothers and half-sisters by the mother (Article 15(2) and (3) of the ZD).

If either of the deceased's parents pre-decease that person and have left no descendants, that part of the estate that would have passed to that parent had they outlived the deceased is inherited by the other parent. If that other parent also pre-deceases the deceased, that parent's descendants inherit that portion of the estate that would have been inherited by one or the other parent (Article 15 of the ZD). If both parents pre-decease the dead person and neither have left any descendants, the entire estate is inherited by the dead person's surviving spouse or extra-marital partner or partner from a civil union (Articles 16 and 17 of the ZD).

Third order of inheritance:

If there is no person who is in a position to inherit under the first or second orders of inheritance, the third order of inheritance is taken into consideration.

Under the third order of inheritance, the estate of a deceased person who has left no descendants or parents, and these descendants and parents have left no descendants or a spouse or extra-marital partner or partner from a civil union, the estate is inherited by the deceased person's grandfathers and grandmothers. One half of the estate is inherited by the grandfather and grandmother on the father's side and the other half by the grandfather and grandmother on the mother's side (Article 18 of the ZD).

The grandmother and grandfather on the same side inherit equal shares of their portion of the estate. If either of the deceased's ancestors on one side pre-decease that person, that portion of the estate that would have gone to that ancestor had they outlived the deceased is inherited by that ancestor's children, grandchildren and further descendants, under the rules applying to cases where children and other descendants inherit the estate of a deceased person. With regard to everyone else, the rules under which the deceased's parents and their descendants inherit (Article 19 of the ZD) apply to the right of inheritance of a grandfather and grandmother from one side and their descendants.

If the grandfather and grandmother from one side pre-decease the deceased and have left no descendants, that part of the estate that would have passed to them had they outlived the deceased is inherited by the grandfather and grandmother from the other side, and by their children, grandchildren and further descendants, as laid down in Article 19 of the ZD (Article 20 of the ZD).

5 What type of authority is competent:

5.1 in matters of succession?

Matters of probate are regulated by the courts in the Republic of Slovenia, with the court with subject-matter jurisdiction in such matters being the local court (okrajno sodišče).

5.2 to receive a declaration of waiver or acceptance of the succession?

The court as part of a probate hearing.

5.3 to receive a declaration of waiver or acceptance of the legacy?

The court as part of a probate hearing.

5.4 to receive a declaration of waiver and acceptance of a reserved share?

The court as part of a probate hearing.

6 Short description of the procedure to settle a succession under national law, including the winding-up of the estate and sharing out of the assets (this includes information whether the succession procedure is initiated by a court or other competent authority on its own motion)

When a person dies or is declared dead, the registrar responsible for entering the death in the death register sends the death certificate to the probate court within 30 days (Article 179(1) of the ZD).

The procedure commences ex officio when the court receives the death certificate.

If according to the death certificate the deceased person has left no estate, the probate court decides not to hold a probate hearing; the court reaches the same decision if the deceased person has left only movable property and none of the persons entitled to inherit request a hearing (Article 203(1) and (2) of the ZD). In all other cases, the court decides to hold a probate hearing. In the course of probate proceedings, the court establishes who the deceased person’s heirs are, which property comprises the estate and which rights from the estate are to be enjoyed by the heirs, legatees and other persons (Article 162 of the ZD).

Probate proceedings are, by their nature, non-litigious proceedings. If any of the facts upon which their rights depend are disputed by the parties, the court suspends the probate hearing and directs the parties towards a civil action or an administrative procedure (Article 210(1) of the ZD).

When the court decides which persons are entitled to the estate, it declares them to be heirs under a decision on inheritance (Article 214(1) of the ZD). The decision on inheritance is delivered to all heirs and legatees, as well as to those persons who have exercised a claim under inheritance in the course of proceedings (Article 215(1) of the ZD).

The court orders the necessary entries to be made in the land registry after the decision on inheritance becomes final.

Any of the heirs may request division of the estate at any time, but not at an inappropriate time. This right may not be subject to a statute of limitations. An agreement whereby an heir renounces their right to request the division of an estate is invalid, as is any provision in a will that prohibits or limits such division (Article 144 of the ZD). The Inheritance Act contains no provisions on how division of an estate is to be implemented; this matter is instead regulated by the Property Code (Stvarnopravni zakonik – SPZ) as part of its provisions on the division of joint property. That is to say, the estate is the joint property of the co-heirs. Co-heirs may determine by agreement how an estate is to be divided. If they are unable to reach agreement, the court decides on the method of division in non-litigious proceedings. If all heirs propose division and the method of division by agreement in the course of probate proceedings, the court makes reference to this agreement in the decision on

inheritance (Article 214(3) of the ZD).

7 How and when does one become an heir or legatee?

The Inheritance Act provides that a deceased person’s estate passes to the heirs under the act itself (*ipso iure*) at the moment of death (Article 132 of the ZD). The decision on inheritance by which the court announces the heirs following the end of the probate proceedings is therefore of a declaratory nature only.

A legatee also acquires a legacy upon the death unless the legacy is subject to conditions or tied to a specific period of time; in this case, the legatee receives the legacy when that condition has been met or that period of time has passed. The acquisition of a legacy means that the legatee may request that the terms of the legacy be met. The general provisions of the SPZ apply to the passing of the right of ownership to the legatee.

8 Are the heirs liable for the deceased's debts and, if yes, under which conditions?

Yes. However, this liability is restricted.An heir is liable for the deceased’s debts up to the value of the assets bequeathed. If there is more than one heir, they are jointly and severally liable for the deceased’s debts, i.e. each up to the value of their respective share of the estate regardless of whether or not division of the estate has already been effected. Regarding the internal ratios of division between the heirs, the debts are covered in proportion to their respective shares of the estate, unless the will determines otherwise (Article 142 of the ZD).

An heir who has renounced his portion of an estate is not liable for the deceased’s debts (Article 142(2) of the ZD).

9 What are the documents and/or information usually required for the purposes of registration of immovable property?

The land registry court decides on whether entry can be made on the basis of documents proving the existence of a legal basis for acquisition of the right that is the subject of entry, on condition that the other conditions laid down by the law have been met.

The basis for the entry of real estate that is the subject of inheritance is a legally final decision on inheritance issued in the course of probate proceedings (point 6 of Article 40(1) of the Land Registry Act, ZZK-1). The land registry court orders the entry of an heir’s right of ownership in the land registry ex officio and pursuant to a legally final decision on inheritance.

9.1 Is the appointment of an administrator mandatory or mandatory upon request? If it is mandatory or mandatory upon request, what are the steps to be taken?

There is no mandatory requirement to appoint an administrator of an estate;

in principle, until an estate is divided it is administered and disposed of by the heirs jointly. An estate may be assigned to the management of a special administrator if the heirs agree. If the heirs cannot reach agreement regarding the administration of an estate, the court appoints an administrator, at the request of any of the heirs, to administer the estate for all the heirs, or determines the portion of the estate which each heir will administer themselves (Article 145 of the ZD).

A testator may appoint in their will one or more persons to act as executors of the will (Article 95(1) of the ZD). Among other things, an executor administers the estate (Article 96(1) of the ZD).

9.2 Who is entitled to execute the disposition upon death of the deceased and/or to administrate the estate?

A testator may appoint in their will one or more persons to act as executors of the will (Article 95(1) of the ZD). Unless the testator has specified otherwise, the duties of an executor of a will are, in particular, to exercise due care over the estate they are administering, attend to the payment of debts and legacies and, above all, to

execute the will in the way that the testator wished (Article 96(1) of the ZD). If no executor of the will has been appointed, the heirs who are administering the estate jointly until it is divided may assign the administration of the estate to a special administrator. If the heirs cannot reach agreement regarding the administration of an estate, the court appoints an administrator, at the request of any of the heirs, to administer the estate for all the heirs, or determines the portion of the estate which each heir will administer themselves (Article 145 of the ZD).

9.3 What powers does an administrator have?

Where a testator has appointed an executor of the will in the will, that will also determine the executor's duties.

Unless the testator has determined otherwise, the following applies under the law (Article 96(1) of the ZD):

- that the executor must exercise due care over the estate. In particular, they must attend to any insurance measures, to the inventorising and valuation of the estate (Article 184 of the ZD), and to the retention of specified movable items (Articles 190 and 191 of the ZD);
- that the executor must administer the estate, where regular administration also includes the disposal of individual items of the estate. During the period in which they discharge this function, the executor of a will excludes any heir from the administration of the estate and from the disposal of items of the estate;
- that the executor must ensure that the testator's debts are settled, and the terms of any legacy met and tasks (burdens) accomplished;
- that the executor must ensure in general that the will is executed as the testator wished (see Prof. K. Zupančič, Prof. V. Žnidaršič Skubic, Dedno pravo (Inheritance law), Uradni list 2009, pp. 170–171).

Where there is more than one executor of a will, they discharge the duties entrusted to them jointly, unless the testator has determined otherwise (Article 96(2) of the ZD). An executor of a will must provide the court with a report on their work, being entitled to a reimbursement of their expenses and to payment for their trouble, which is paid from the available portion of the estate by decision of the court (Article 97 of the ZD).

If no executor of the will has been appointed, the heirs who are administering the estate jointly until it is divided may assign the administration of the estate to a special administrator. If the heirs cannot reach agreement regarding the administration of an estate, the court appoints an administrator, at the request of any of the heirs, to administer the estate for all the heirs, or determines the portion of the estate which each heir will administer themselves (Article 145 of the ZD).

10 Which documents are typically issued under national law in the course of or at the end of succession proceedings proving the status and rights of the beneficiaries? Do they have specific evidentiary effects?

The court issues a decision on inheritance, which is a court decision on the merits of the case, at the end of the probate proceedings. The decision establishes the scope of the estate, and announces the heirs and legatees, as well as any other persons with an entitlement to a portion of the estate. Under the ZD, the decision on inheritance must include the following components (Article 214(2)):

1. the surname and first name (as well as any previous surnames) of the deceased person and the name of their father, the deceased person's profession, date of birth and nationality and, for a deceased married woman, her maiden name;
2. a statement of the real estate, with data from the land registry, and a statement of the movable property with reference to the inventory;
3. the heir's surname, first name, profession and place of permanent residence, the relationship between the heir and the deceased, whether the heir is inheriting as a legal heir or an heir on the basis of a will and, where there is more than one heir, their respective shares in the estate;
4. whether the process of determining an heir has been suspended;
5. whether the right of an heir has been suspended because the appropriate time has not yet arrived or been restricted to a specific time, been suspended because a condition has not been met or is dependent upon a resolutory condition or a task that can be regarded as a resolutory condition, or is restricted by a right of usufruct, and to whose benefit;
6. the surname, first name, profession and place of permanent residence of persons entitled to a legacy, usufruct or any other right ensuing from the estate, with a precise description of this right.

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