General information - Hungary

TABLE OF CONTENTS

This factsheet was prepared in cooperation with the Council of the Notariats of the EU(CNUE).

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

a) wills

There are three main types of wills in the Hungarian legal system: authentic wills, written private wills and (as an exceptional type) oral wills (Section 7:13 of the Civil Code (Polgári Törvénykönyv)).

(aa) An authentic will must be drafted before a notary public. When an authentic will is drafted, the notary public applies the relevant special legal regulations (the provisions of the Act on public notaries applicable to notarial deeds).

(ab) Hungarian law recognises three subtypes of *written private wills*:

holographic will: this will is valid as regards form if it is entirely written and signed by the testator in his own hand (Section 7:17(1)(*a*) of the Civil Code);

will written by other persons (allographic will): such wills must be signed by the testator in the contemporaneous presence of two witnesses or, if they were signed previously, the testator must declare the signature to be his own before two witnesses in their contemporaneous presence. The witnesses must sign the will indicating their capacity as such. Typewritten wills are always considered to be allographic even if typed by the testator himself (Section 7:17(1)(*b*) of the Civil Code).

p*rivate will deposited with a notary public*: For such will to be valid in respect of form, the testator must sign the will (whether allographic or holographic) himself, then deposit it personally with a notary public, specifically marked as a will. Wills may be deposited with a notary public as an open document or sealed document (Section 7:17(1)(*c*) of the Civil Code).

As another formal requirement for the validity of all three types of private wills in respect of form, *the date when it was drafted* must be clearly indicated in the deed itself.

Within the category of written private wills there are special rules applicable to wills consisting of *several separate sheets*:

- If the will is holographic, each sheet must bear a sequential page number;

- If the will is allographic, in addition to the requirement of the sequential numbering of sheets, the testator and the two witnesses must sign each sheet (Section 7:17(2) of the Civil Code).

A written will can be made *only in a language* that the testator can understand and

- write (in the case of holographic wills); or

- read (in the case of allographic wills).

Wills drafted in shorthand or another symbol or code writing other than normal writing are invalid (Section 7:16 of the Civil Code).

ac) Oral wills (nuncupative wills) can be made by persons who are in an extraordinary lifethreatening situation where making a written will is not possible (Section 7:20 of the Civil Code). To make an oral will, the testator must orally express his will in its entirety in the contemporaneous presence of two witnesses in a language understood by the witnesses – or in sign language if the testator uses sign language – and concurrently announce that his oral statement constitutes his will (Section 7:21 of the Civil Code). The exceptional nature of oral wills is emphasised by the provision that such will becomes inoperative if the testator had the opportunity to make a written will without any difficulty during a period of thirty consecutive days following the cessation of the situation that justified the making of the oral will (Section 7:45 of the Civil Code).

b) special rules as to the form of joint wills

The Civil Code allows spouses to make joint wills during the term of their conjugal community (Section 7:23 of the Civil Code).

It should be noted that in addition to spouses, registered partners are also allowed to make joint wills, taking into account Section 3 (1) of the Act regulating registered partnerships (Act XXIX of 2009).

Spouses (registered partners) may make joint wills in the following formats:

ba) in the form of an authentic will (notarized);

bb) in the form of a holographic private will: In this case, the deed is entirely written and signed by one of the testators in his or her own handwriting, and the other testator declares in the same document in a signed statement executed in his or her own handwriting that the document also contains his or her last will and testament.

bc) in an allographic form: In this case, the deed is signed by the testators in the contemporaneous presence of the other testator and two witnesses, or (if signed earlier) both testators declare separately in the contemporaneous presence of the other testator and the witnesses that the signature on the document is their own.

There are special rules applicable to the form of joint wills consisting of *several separate sheets*:

- If the will is written in the own handwriting of one of the testators, each sheet of the will must be numbered in sequence and signed by the other testator;

- If the will is allographic, in addition to the requirement of sequential numbering of the pages, the two testators and both witnesses must sign each sheet (Section 7:23(3) of the Civil Code).

c) agreement on succession

In Hungarian law, an agreement on succession is an agreement where one of the contracting parties (the testator) names the other party his heir *in exchange for maintenance, annuity or care* (Section 7:48 of the Civil Code).

Consequently, in Hungarian law an agreement on succession is always a contract for pecuniary interest. In the agreement on succession the testator may name the other contracting party his heir in respect of his entire estate or a specific part thereof or in respect of certain property. The maintenance, annuity or care offered in consideration may be granted to the testator or to a third party specified in the agreement. An agreement on succession is a disposition of property upon death only in respect of the contractual statement of the testator but not in respect of the other contracting party (the person providing maintenance, annuity or care).

The provisions governing written wills apply to the *formal validity* requirements of agreements on succession with the exception that the formal requirements of allographic wills apply to such agreements even if they are drafted in the handwriting of one of the parties (Section 7:49(1) of the Civil Code). Accordingly, an agreement on succession is formally valid if

- it is executed in an authentic instrument by a notary public (similarly to an authentic will), or

- it is executed in the manner required for allographic wills (that is, two witnesses are involved).

For the validity of an agreement on succession, *the consent of the legal representative and the approval of the guardian authority* is required if the party entering an agreement on succession as the testator is

- a minor of limited legal capacity or

a person whose legal capacity has been partially limited in respect of making legal statements relating to property (Section 7:49(2) of the Civil Code).

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

No. The validity of the disposition is not contingent upon its entry in any official register. However, in cases where a notary public is involved in the drafting of a disposition, such notary public provides ex officio for the entry of the fact that a disposition of property has been drafted (or revoked, amended or a will deposited with a notary public has been withdrawn) in the National Register of Wills (Végrendeletek Országos Nyilvántartása). Accordingly, the making of the following types of dispositions of property upon death (or their revocation, amendment or the withdrawal of wills deposited with a notary public) is entered on the National Register of Wills:

- authentic will (will drawn up by a notary public in an authentic instrument);

- private will deposited with a notary public;

- agreement as to succession (if drawn up by a notary public in an authentic instrument);

- testamentary gift (if drawn up by a notary public in an authentic instrument).

However, the omission of such registration for any reason does not compromise the validity of the will.

3 Are there restrictions on the freedom to dispose of property upon death (e.g. reserved share)?

Pursuant to Section 7:10 of the Civil Code, testators are entitled to freely dispose of their property, or a part thereof, by a disposition of property upon death.

Accordingly, the freedom of testamentary disposition extends to all the assets of the testator. Even though Hungarian law contains the statutory arrangement of reserved share accruing to certain close relatives (descendant, spouse, parent) of the testator, the reserved share under Hungarian law is a claim *subject to contract law*, which the beneficiary may enforce vis-a-vis the heirs. (The period of limitation for this claim is five years.) The person entitled to a reserved share does not become an heir, that is, he is not entitled to any material (in rem) share in the estate even if he is successful in enforcing his claim against the heir.

By way of a reserved share, the person entitled to a reserved share has a right to a third of the share, which that person would inherit as a legal heir. Where a spouse is also entitled, as a legal heir, to usufruct rights, a reserved share is, in this respect, a limited usufruct right that provides for his or her needs, taking into account the assets he or she has inherited.

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

In the absence of a disposition of property upon death, the rules applicable to intestacy govern succession. Under intestate succession, relatives (descendants, relatives in the ascending or lateral lines) as well as the surviving spouse (or registered partner) of the deceased person inherit, in accordance with the rules outlined below.

a) Inheritance by relatives

aa) Inheritance by descendants (Section 7:55 of the Civil Code)

Legal heirs are, first of all, the children of the testator; two or more children inherit in equal shares. In the place of a child (or a more distant descendant) debarred from succession, the descendants of a debarred person succeed in accordance with the rules of substitution, that is,

- in equal shares among themselves;

- in aggregate, the share that their debarred ascendant would have inherited.

However, when determining the share of the estate accruing to the descendants of the deceased person, the so-called *obligation to restore gifts (hotchpot)* of the descendants must also be taken into consideration (see point *e*)).

ab) Inheritance by parents and parents' descendants (Section 7:63 of the Civil Code)

If the testator has no descendant and had no spouse (or if they are excluded from succession), the parents of the descendant succeed in equal shares. In the place of a parent debarred from succession, the descendants of such parent succeed in the same manner in which the descendants of a child succeed in its stead (in accordance with the rules of substitution). If a parent debarred from succession has no descendant, or if the descendant is excluded from succession, the other parent alone or his descendants succeed.

ac) Inheritance by grandparents and grandparents' descendants (Section 7:63 of the Civil Code)

If the deceased person has no descendant, parents or parental descendants and had no spouse (or if they are excluded from succession), the grandparents of the deceased person are the legal heirs in equal shares. In the place of a grandparent debarred from succession, the descendants of such grandparent succeed in the same manner in which the descendants of the parent succeed instead of that parent (in accordance with the rules of substitution).

If a grandparent debarred from succession has no descendant or if the descendant is excluded from succession, the spouse of such grandparent succeeds in his stead, and if he too is debarred, his descendants succeed. If either set of grandparents has been debarred and there are no descendants in their place (or if they are excluded from succession), the entire estate is inherited by the other set of grandparents or their descendants.

ad) Inheritance by great-grandparents and great-grandparents' descendants (Section 7:65 of the Civil Code)

If there are no heirs in the grandparents' kinship group (or they are excluded from succession), the legal heirs of the deceased person are his great-grandparents in equal shares. In the place of a great-grandparent debarred from succession, the descendants of such greatgrandparent succeed in the same manner in which the descendants of the grandparent succeed in the stead of that grandparent (in line with the rules of substitution).

If a great-grandparent debarred from succession has no descendant (or if the descendant is excluded from succession), the spouse of such great-grandparent succeeds in his stead, and if he too is debarred, his descendants succeed. If either set of great-grandparents has been debarred and there are no descendants in their place (or if they are excluded from succession), the entire estate is inherited by the other set of great-grandparents in equal shares.

ae) Intestate succession by distant relatives (Section 7:66 of the Civil Code)

If the deceased person has no great-grandparents or descendants of great-grandparents (or if they are excluded from succession), distant relatives of the deceased person become legal heirs in equal shares.

af) Escheat (Section 7:74 of the Civil Code)

In the absence of legal heirs the estate reverts to the State.

The State is an heir of necessity, which means that it is not entitled to waive an inheritance. In other respects, however, the State has the same legal status as other heirs. In Hungarian law, the inheritance of the State is an acquisition subject to civil law rather than public law.

b) Inheritance by the spouse (Sections 7:58 – 7:62 of the Civil Code)

The intestate succession of the surviving spouse is contingent upon the existence of a *legally valid* wedlock with the deceased person. Nevertheless, the mere existence of wedlock is not sufficient for the intestate succession of the spouse. Section 7:62 of the Civil Code specifies a special cause for debarment in the event of the absence of *conjugal community*: the surviving spouse may not inherit if the couple were separated at the time of the opening of the succession and it is manifestly evident from the circumstances that there was no reasonable expectation of reconciliation. This reason for debarment may be invoked by a person who, as the result of such debarment, would himself inherit or would be exempted from an obligation or other burden to which he is bound by virtue of the disposition of property.

It should be noted that the rules governing the succession of spouses in the Civil Code must also be applied, with the necessary modifications, to *registered partners* of the testator; in other words, registered partners have the same inheritance status as spouses, taking into account Section 3(1) of the Act regulating registered partnership (Act XXIX of 2009).

In contrast to registered spouses, so-called de facto domestic partners (persons who lived in actual conjugal community with the testator out of wedlock or registered partnership) are not entitled to intestate succession under Hungarian law.

The status of spouses in intestate succession depends on the presence of any other legal heirs of the testator:

ba) Inheritance by spouses and descendants (Section 7:58 of the Civil Code)

If the testator has descendants and a surviving spouse, the surviving spouse has the following rights in succession:

- life estate on the family dwelling used together with the testator, including furnishings and appliances; and

- from the remainder of the estate a share of the same size as inherited by the children of the deceased (one ‘share of a child’)

The spouse may at any time request the redemption of his life estate (in respect of the future) (Section 7:59 of the Civil Code). In this case, the spouse is entitled to one ‘share of a child’ – in kind or in money – from the estate to be redeemed. The life estate may be redeemed in the course of the probate proceedings as well. The redemption of the life estate must be carried out in due consideration of the interested parties’ (the spouse’s and the descendant’s) reasonable interests.

In the course of the probate proceedings, the descendants and the spouse may stipulate in their agreement for the allocation of the estate (in the so-called allocation agreement) that instead of the ‘share of a child’, the spouse receives a life estate for the entire estate.

bb) Inheritance by spouses and parents (Section 7:60 of the Civil Code)

If the deceased person has no descendant (or the descendant is excluded from succession) and the deceased person has surviving parents as well as a surviving spouse, the surviving spouse has the following rights in succession:

- the family dwelling used together with the deceased person, including furnishings and appliances (the ownership title to such property rather than an estate for life); and

- half of the remaining part of the estate. The other half of the estate is distributed as follows:

- This part of the estate is divided between the two parents of the deceased person in equal shares;

- If, however, one of the parents is debarred from succession, the other parent and the testator’s spouse inherit in equal shares the portion that would be allocated to the debarred parent.

bc) Spouse as the sole heir (Section 7:61 of the Civil Code)

If the testator has no descendant or surviving parent (or they are excluded from succession), the surviving spouse inherits the entire state. Consequently, the intestate succession of the surviving spouse precludes intestate succession by the descendants of the deceased person’s parents (or siblings of the deceased person) or by distant relatives in the ascending or lateral lines.

c) Legal effects of adoption in respect of intestate succession

Adoption gives rise to rights in intestate succession between the adopted person and the adoptive parent and his relatives. In addition, in certain cases intestate succession rights also remain between the adoptee and his blood relatives.

ca) Intestate succession by the adoptee

Adopted persons, during the existence of adoption, are treated as blood descendants of the adoptive parent for the purposes of intestate succession: they inherit as a blood descendant of the adoptive parent from the estate of the adoptive parent and his relatives. The adoptee also retains his legal right to inherit from his blood relatives, but only if the adoptee was adopted by a relative in the ascending line, a sibling, or a descendant of such relative in the ascending line. (Section 7:72 of the Civil Code)

cb) Intestate succession of the adoptee's property

The effect of adoption as regards inheritance also applies 'conversely'. The following persons are entitled to be legal heirs of an adopted person:

- his descendants and surviving spouse;

- in the absence of descendants, his spouse and adoptive parents;

- in the absence of descendants and a surviving spouse, adoptive parents and their relatives,

in accordance with the general rules of intestate succession.

The intestate succession of an adoptive parent and his relatives is conditional on the adoption existing at the time of the opening of the succession.

If, however, the persons listed above do not inherit after the adoptee, the adoptee's blood relatives are legal heirs, provided that the adoptee was adopted by a relative in the ascending line, a sibling, or a descendant of such relative in the ascending line (Section 7:73 of the Civil Code).

d) 'Lineal succession' – special rules for intestate succession regarding particular assets

So-called 'lineal succession' is a special feature of Hungarian law. Lineal succession means *particular* intestate succession rules whereby certain assets in the estate (the so-called lineal property) are subject to treatment different from the general rules in respect of intestate succession.

It should be noted that the rules of lineal succession are applicable exclusively *if there are no descendants*. If the deceased person has descendants as legal heirs, the general rules of intestate succession apply.

da) Assets belonging to the lineal property (Section 7:67 of the Civil Code)

Lineal property constitutes a sub-estate within the estate of the deceased person. This subestate comprises those assets

- which the deceased person acquired from an ancestor by inheritance or gift; and

- which the deceased person inherited or received as a gift from a sibling or a descendant of a sibling, provided that the sibling or the descendant of the sibling acquired the property in question from his and the testator's common ancestor, by way of inheritance or gift.

However, the law removes certain assets from the scope of lineal property (so-called 'property excluded from lineal succession'); see point *dd)* below.

The lineal nature of the property (that is, that the property in question belongs to the lineal property) must be proven by the person who would inherit under this title.

db) Inheritance of lineal property (Section 7:68 of the Civil Code)

Lineal property is inherited by the parents of the testator (or the descendants of debarred parents) and the grandparents and distant ancestors of the testator ('lineal heirs'). The inheritance of lineal property is governed by the following rules:

- A parent inherits property that has come down to the testator from him or one of his ancestors. If the parent has been debarred, his descendants inherit in his place according to the general provisions on intestate succession.

- If both the parent and the parent's descendant entitled to inherit the lineal property have been debarred, lineal property is inherited by the grandparent of the deceased person;

- If the grandparent of the deceased person has also been debarred, the lineal property is inherited by a more distant ascendant of the deceased person.

If the deceased person has none of the heirs listed above, the rules of lineal succession are not applied: in this case, the inheritance of lineal property is governed by the general rules of intestate succession.

dc) The surviving spouse's life estate on lineal property (Section 7:69 of the Civil Code)

The heirs specified in point *db*) (lineal heirs) inherit the ownership title to lineal property. However, the surviving spouse of the deceased person is entitled to life estate on lineal property.

The redemption of the right to life estate can be requested as follows:

- Any of the interested parties – that is, either the spouse entitled to life estate or the lineal heir – may request the redemption of the life estate;

- However, redemption relating to life estate on the family dwelling used together with the deceased person, including furnishings and appliances, may be requested exclusively by the spouse.

In the event of the redemption of life estate, the spouse is entitled to one-third of the lineal property.

dd) Property excluded from lineal succession (Section 7:70 of the Civil Code)

Notwithstanding the provisions of *da*), the following items are excluded from lineal property:

- gifts of ordinary value;

- any property that no longer exists at the time of the testator's death. However, the provisions on lineal succession apply to any substitute property or any property purchased from the proceeds received for such property.

If a testator has a surviving spouse, no claim may be made, on the grounds of lineal succession, for furnishings and household accessories of ordinary value.

e) Obligation to restore gifts (hotchpot)

If the heirs are descendants of the deceased person, the share allocated to each heir from the estate is influenced by the obligation of the descendants to restore gifts vis-a-vis one another. Essentially, if several descendants succeed together, each heir adds to the value of the estate the value of *advancements* they received from the testator during his lifetime (Section 7:56 of the Civil Code).

The obligation to restore gifts is governed by the following main rules.

Based on the obligation to restore gifts, the co-heir must add advancements to the estate as long as

- the testator expressly stipulated such advancements to be included in the heir's share of the estate, or

- the circumstances suggest that the bequest was made under the obligation of inclusion.

Nevertheless, the obligation to restore gifts does not extend to the following bequests (Section 7:56(3) of the Civil Code):

- advancements of ordinary value; and

- maintenance provided to descendants who are in need of support

even if the testator expressly stipulated it.

The procedure of the restoration of gifts comprises the following actions (Section 7:57(1) of the Civil Code):

- heirs must add to the value of the estate the value of the advancements received from the testator;

- the resulting consolidated value (that is, the consolidated value determined by adding the value of the estate to the net value of the restored advancements) must be divided proportionately among the heirs as appropriate for their share under intestate succession;

- the value of advancements restored by each heir (that is, the value of the advancement received by him from the deceased person) must be deducted from the share allocated to that heir.

If the value restored by a co-heir reaches or exceeds the value of his share of the estate as calculated on the basis of restored values, he is considered satisfied from the inheritance to be divided, but is not required to refund any excess (Section 7:57(4) of the Civil Code).

Descendants have an obligation to restore gifts

- in the event of intestate succession; or alternatively:

if the descendants inherit shares corresponding to their legal share of the estate by virtue of a will (Section 7:56(2) of the Civil Code).

5 What type of authority is competent:

5.1 in matters of succession?

In Hungary, proceedings subject to the law of inheritance are within the competence of notaries public or the courts.

- If there is no dispute between the parties having an interest in succession, the legal matters related to the estate are generally settled in probate proceedings conducted by a notary public (for details, see point 6). The probate proceeding conducted by a notary public is a noncontentious proceeding, where the notary public has a function similar to that of a court, and his proceeding ends with a formal decision (‘grant of probate’).

- If, however, there is a legal dispute between the interested parties, this may not be settled by the notary public; in such cases, court proceedings follow.

As legal disputes in succession matters are relatively infrequent, the overwhelming majority of succession cases in Hungary is definitively settled in the probate proceedings conducted by a notary public.

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

Hungarian law follows the principle of *ipso iure* succession; the estate is transferred to the heir at the time of death of the testator without any separate legal act. Consequently, under Hungarian law it is not necessary to make a statement about the *acceptance* of inheritance.

If an heir does not wish to inherit, he may make a statement to *waive* succession. The law provides no specific requirements as to the form of the waiver; it is valid as regards form whether made orally or in writing.

Nevertheless, in Hungary the order of succession is determined in a formal legal procedure, the so-called probate proceeding (see point 6), thus the notary public conducting the probate proceeding must be informed about the waiver if it is to be taken into account during the probate proceeding. Therefore, in practice either the waiver is made in front of the notary public conducting the probate proceeding or a written waiver is submitted to such notary public.

If an heir waives succession, this takes effect retroactively on the date of the testator’s death: the estate is considered as not having devolved.

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

The rules explained in point 5.2 concerning the transfer and waiver of succession govern, with the necessary modifications, specific legacies (legatum vindicationis).

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

As noted above, in Hungarian law reserved shares are claims subject to the law of contract, which can be enforced against an heir. It does not represent a material (in rem) share in the estate. Accordingly, no ‘declaration of waiver or acceptance of a reserved share’ is known under Hungarian law. The mode of settlement of a claim for a reserved share depends primarily on the relationship between the heir and the person entitled to a reserved share:

- If there is *consensus* between the heir and the person entitled to the reserved share in this respect (that is, the heir recognises the claim for a reserved share), they may make an agreement in the probate proceedings as to the satisfaction of the claim for a reserved share (e.g., the heir may transfer some property included in the estate to the person entitled to a reserved share by way of satisfying his claim);

Otherwise the person entitled to a reserved share may enforce his claim against the heir in court.

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)

Hungarian law provides for a formal legal procedure of the so-called probate proceedings. This proceeding is started *ex officio* (at the official’s own initiative) and serves the purpose of involving all interested parties (heirs, legatees, persons entitled to reserved shares, estate creditors, etc.) to settle all legal issues relating to succession in a single procedure as far as possible.

In Hungary probate proceedings consist of two stages. The first stage is the *inventory proceeding* conducted by the administrative authority (a designated employee of the competent local mayor's office, the inventory official). This procedure effectively serves to lay the ground for the proceeding of the notary public; its aim is to clarify the personal and material circumstances of the succession case (in particular the property included in the estate as well as the range of interested persons and to establish whether the deceased person has left a disposition of property upon death). All these facts are recorded in the inventory of the estate, which is sent to the competent notary public when completed.

The second stage is the *proceeding before the notary public*, which is conducted in accordance with the rules on non-contentious court proceedings. In this procedure, the notary public plays a function similar to that of courts and exercises the public authority of the state.

This procedure is subject to specific *rules of jurisdictio*n: only the notary public with competence as defined in law may proceed; in other words, in probate proceedings the interested parties (e.g. the heirs) may not involve the notary public of their choice.

In the course of the proceedings, the notary public examines ex officio the facts and circumstances that determine the order of succession. A hearing is generally necessary to clarify the facts; the notary public summons the interested parties to attend that hearing. If there is evidence indicating that the deceased person has left a disposition of property upon death, the notary public takes steps ex officio to acquire that deed.

In Hungary, the distribution of the estate among heirs generally occurs in the *framework* of the probate proceedings. The distribution of the estate is essentially the termination of the coownership of heirs that resulted through succession. This tends to occur through an agreement among the interested heirs: the *allocation agreement*. If heirs conclude such an allocation agreement, the notary public issues the grant of probate based on the agreement, with corresponding content.

In the course of the probate proceedings an agreement may be made between heirs and other interested parties as well: heirs may transfer, in part or in whole, the property acquired by succession to an estate creditor or a person entitled to a reserved share by way of satisfying their claims. This allows for the negotiated settlement of the claims of estate creditors or of persons entitled to a reserved share in the course of the probate proceedings.

At the conclusion of the probate proceedings the notary public issues a formal decision: a *grant of probate*. In this decision the notary public legally transfers the various elements of the estate to the heirs (or legatees).

The interested parties may *appeal* the grant of probate issued by the notary public; the appeal is adjudicated by the competent regional court. The final grant of probate is an authentic public document that certifies the status of the heir (legatee) named in it. The notary public provides ex officio for the forwarding of the final grant of probate to the authority maintaining the real estate register (or register of other items of property).

It should be noted that if there is a legal dispute between the interested parties, the notary public may not resolve it in the probate proceedings; legal disputes may only be settled in court proceedings.

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

Pursuant to Section 7:1 of the Civil Code, the estate of a person devolves upon an heir in its entirety after the testator's death. Accordingly, Hungarian law follows the principle of *ipso iure* succession. An heir acquires the estate by virtue of the law, without any separate legal act (e.g., declaration of acceptance) at the time of the testator's death; 'vacant estate' (hereditas iacens) does not exist in Hungarian law. In the case of more than one heir, they acquire the estate in proportion to their shares in the estate upon the death of the testator; consequently, at the time of death an undivided co-ownership of property is created among them.

There are two kinds of legacy under Hungarian civil law: specific legacy (legatum vindicationis) and obligatory legacy (legatum damnationis).

Specific legacy is the donation by the testator of a particular item of property in the estate to a specified beneficiary (the specific legatee) in a disposition of property upon death. Specific legacy is direct acquisition of a right in the estate; that is, the legatee also acquires the object of the specific legacy at the time of the testator's death.

Obligatory legacy is a legacy whereby the testator obliges his heir, in a disposition of property upon death, to provide some financial benefit to a specified beneficiary (for instance, pay a certain sum of money). In terms of its legal nature, obligatory legacy is an obligatory legal claim against the heir, and it does not entail the direct acquisition of rights from the testator.

In light of the above, under Hungarian law heirs and specific legatees acquire the estate or legacy at the time of the testator's death. It should be noted, however, that despite direct, ipso iure acquisition of rights, under Hungarian law it is generally necessary to conduct a formal legal procedure (probate proceedings) to provide authentic certification of succession.

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

Yes. Pursuant to Section 7:96 of the Civil Code, heirs are responsible for estate debts. This liability of heirs is limited, as follows:

- Heirs are liable for estate debts primarily with the estate property ('with the objects and proceeds of the estate') (*cum viribus* liability).

- If, however, the objects or proceeds of an estate are not in the heir's possession at the time the claims are enforced, the heir's other property shall also be appropriated up to the value of their inheritance to cover the claims (*pro viribus* liability).

It should be noted that, unlike other legal systems, Hungarian law recognises no correlation between the liability of heirs and the inventory of the estate. The limited nature of the liability of heirs arises from the law: heirs need not make a 'declaration limiting their liability' when accepting a succession.

Section 7:94 of the Civil Code specifies the claims that constitute estate debt. Accordingly, estate debts comprise:

(a) costs of a proper burial for the testator;

(b) applicable costs of acquiring, securing, and managing an estate ('estate costs'), as well as the costs of probate proceedings;

(c) the testator's debts;

(d) obligations based on the reserved share;

(e) liabilities based on legacies and devises.

The above five categories of estate debts are ranked in a hierarchical *order* (Section 7:95 of the Civil Code). Debts are satisfied in the sequence established for the different categories of estate debts. If full satisfaction of all the debts in a debt category is not possible, claims are satisfied proportionately within the category (in proportion to the relative size of claims).

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

If the estate contains real property, the notary public provides ex officio for the forwarding of the final grant of probate to the competent authority maintaining the real estate register (see point 6) so that changes relating to the property can be entered in the register.

Pursuant to Section 29 of Act CXLI of 1997 on Real Estate Registration (1997. évi CXLI. törvény az ingatlan-nyilvántartásról; 'Real Estate Registration Act'), as a general rule, rights may be registered and facts may be recorded on the basis of public documents, private documents of full probative force, or copies of such witnessed by a notary public, which substantiate the creation, modification or termination of the right or fact which is the subject matter of registration, with a statement of authorization for registration from the right-holder of record or potential right-holder to be registered in the real estate register as an interim beneficiary (i.e. an authorization for registration, which may be granted by the right-holder by way of issuing a document of the same formal requirements as the document on the basis of which the registration is effected).

Section 32 of the Real Estate Registration Act specifies the required content of a document for the purposes of real estate registration:

a) the natural identification data, address and personal identification number of the client,

b) the name, statistical number, registered office and the court or company registration number of organisations having statistical numbers; for ecclesiastic legal persons, the registration number,

c) full address and description of the property in question (municipality, topographical lot number) as well as the ownership share affected,

d) detailed description of the right or fact,

e) the legal grounds of the change,

f) agreement of the parties concerned and/or an unconditional and irrevocable statement of authorization by the registered owner,

g) contracting parties' statement concerning their respective citizenship.

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?

Hungarian law does not recognise the legal concept of administrator of an estate (trustee).

Nevertheless, in certain cases the proceeding notary public may appoint an administrator to perform certain functions of administration of property in the estate. This may occur in the following cases:

aa) administrator for the exercise of membership rights in business associations (Section 32(2) of the Succession Act)

If the estate includes a participation/share in a business association (or cooperative), the notary public may appoint an administrator for the temporary exercise of rights arising from the participation/share. Such administrator is appointed at the request of the association (cooperative) or of any person (entity) having an interest in its operation.

ab) administrator for collections (Section 32(3) of the Succession Act)

If the estate includes claims, the notary public may appoint an administrator to collect such claims, at the request of a party having an interest in succession. Such administrator is responsible for taking the legal measures necessary to enforce claims that are part of the estate.

No administrator is appointed (even in the above cases) if the aforementioned acts are performed by an *executor of the will*.

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

In Hungary, legal issues relating to succession are settled in a formal legal procedure (probate proceedings) conducted by a notary public, who performs the functions of a judge in the proceedings (see point 6).

The notary public ascertains ex officio whether there is any entry in the National Register of Wills regarding the disposition of property upon death of the deceased person and provides ex officio for the acquisition of the disposition of property upon the testator's death if there is information indicating that a disposition of property exists.

Accordingly, under Hungarian law it is the *task and responsibility of the notary public conducting the probate proceedings to enforce a disposition of property upon death*.

Nevertheless, Hungarian law also allows testators to appoint an executor of their disposition of property (will). It should be emphasised, however, that the appointment of an executor of the will does not substitute for probate proceedings; an executor of the will may not 'assume' the responsibilities of a notary public.

The rights and obligations of an executor of the will are governed by the provisions of the disposition of property upon death. If the disposition contains no provisions in this regard, the executor of the will has the following rights and obligations (Section 99 of the Succession Act):

- assist the proceeding authorities in taking an inventory of the estate;

- initiate security measures to safeguard the estate where required;

- manage the estate. In this asset management role, the executor of the will has the right and obligation to

- demand that heirs or legatees implement the provisions of the will;

- satisfy estate creditors (acting on his own behalf, but to the debit of the estate);

- temporarily exercise membership rights arising from any shares (participations) in business association (cooperatives) included in the estate;

- enforce claims that are part of the estate (acting on his own behalf, but to the credit of the estate).

However, the asset management rights of the executor of the will are limited: he may not assume any obligations in respect of the estate property and may not sell property, except where every person having an interest in succession has consented to such acts; furthermore, he may not make a disposition to the debit of the estate free of charge.

9.3 What powers does an administrator have?

For the rights and obligations of the administrator appointed by the notary public and of the executor of the will, see point 9.1.

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?

As indicated above (see point 6), in Hungary probate proceedings are conducted by a notary public. At the end of this procedure a formal decision, the *grant of probate* is issued. In this decision the notary public legally transfers the elements of the estate to the individual heirs.

It should be noted, however, that the acquisition of ownership by heirs does not occur by virtue of the grant of probate. Hungarian law, as noted above, follows the principle of *ipso iure* succession; the estate devolves to the heirs at the time of the testator's death. In this respect the grant of probate is *declaratory* in effect.

Once it has become final, the grant of probate issued by the notary public has a *legitimising function*: it is an authentic document which certifies to third parties the status of the persons named therein as heirs (or legatees) unless a court decides otherwise in a legal procedure.

Last update: 09/07/2019