General information - Spain

Please note that the original language version of this page (es) has been amended recently. The language version you are now viewing is currently being prepared by our translators.

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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?

Spain has seven different legal systems as far as inheritance law is concerned. These are directly applicable to non-Spanish residents in each territory with its own legislation other than Spanish. For Spanish nationals, the criterion of regional citizenship

must be applied (link with each regulatory territory according to Spanish internal rules) – Article 36 of Regulation (EU) No 650/2012 of 4 July 2012.

As far as testamentary dispositions are concerned, a distinction must be made between the regulation under common civil law, as laid down by the Civil Code of 1889 and amended several times, especially since the publication of the Spanish Constitution of 1978, and the regulation under the local or special laws of those Autonomous Communities with responsibilities in the area of civil law (Galicia, the Basque Country, Navarre, Aragon, Catalonia and the Balearic Islands).

Under common civil law, the will is the succession title given that, as a general rule, the succession contract or joint will is not accepted. This may be:

Open: this is the usual way of making a will, before a notary. The latter drafts and therefore knows its content, which is incorporated into the notary's official records and notified to the Ministry of Justice's General Register of Wills through the Directorate General for Registers and Notaries.

Closed, now obsolete: this will is notarised, without the notary being aware of the content of the testamentary disposition.

Holographic: this type of will, not used very often, is handwritten by the testator, with each and every page signed and dated, complying with some special formal requirements. It contains the testamentary will of the testator.

Common civil law is available on the Official State Gazette website (http://www.boe.es/buscar/pdf/1889/BOE-A-1889-4763-consolidado.pdf). A translation of this text in English and in French is available at: http://www.mjusticia.gob.es/cs/Satellite/es/1288774502225/ListaPublicaciones.html

Local or special laws (*Derechos forales o especiales*) have their own rules on wills in each of these territories, with different and specific concepts being recognised in each of these areas. Some accept the joint will and the succession agreement or contract.

The text of the specific regulation under local or special laws is available at the following address: http://www.boe.es/legislacion/codigos/codigo.php?id=48&modo=1&nota=0&tab=2

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

Wills enacted before a notary must be registered by the authorising notary (there is no need for the testator to request this) in the General Register of Wills, which, as mentioned, is held by the Ministry of Justice, through the Directorate General for Registers and Notaries. In the event that there is a will, this Register will indicate the date of the most recent one, the previous wills and the official notarial records in which said will was incorporated. Notarial associations can provide up-to-date information on the notary or the archive where the will may be located if the authorising notary is no longer in practice (http://www.notariado.org).

This Register is not publicly accessible. It can only be accessed by persons who can prove that they have a legitimate interest in the succession once the testator has passed away, and, during his or her lifetime, by the testator or his or her special representative, or through a court order in case of incapacity.

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

Spanish common law reserves a portion of the inheritance for certain relatives, in the form of a legitimate portion. According to the Civil Code, the 'legitimate portion is the portion of the estate that the testator cannot distribute as this portion is reserved by law to certain heirs, referred to as 'legal heirs'.

1. Legal heirs are:
2. Children and descendants, with respect to their parents and ascendants.
3. In the absence of the above, parents and ascendants, with respect to their children and descendants.
4. The widow or widower in the manner provided by law.

The legitimate portion of children and descendants consists of two-thirds of the estate of the father and mother. However, the latter may distribute one of the two-thirds forming the legitimate portion in order to improve the inheritance of their children or descendants. The remaining third will be freely distributable. It is characterised by attributing a right over the entire property, since it is in general *pars bonorum,* with a few exceptions.

The local or special laws contain various rules laying down specific provisions relating to legitimate portions. Each of these rules must be examined to determine the specific aspects regulated in each of these territories, which range from the *pars bonorum*

legitimate portion to *pars valorumo* involving a right to a share of the value of the property, which is paid in cash and is a simple credit right, as in Catalonia, and even a symbolic legitimate portion as in Navarre, which simply requires a ritual formula in the will of the testator required to pay.

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

We should once again bear in mind that Spain has seven inheritance systems. In the absence of testamentary heirs, under common civil law, the law distributes the inheritance in this order: children, parents (in both cases with the spouse holding a right of usufruct over one-third in proportion to one-third or one-half of the inheritance under usufruct respectively), widow or widower; relatives of the deceased person, and the State. In the case of intestate succession in favour of relatives, only those relatives within the fourth degree (i.e. first cousins) may inherit. The right to inherit intestate does not extend beyond that.

The local laws contain specific provisions on this matter. In addition to the possibility of inheritance by descendants, ascendants, widows/widowers and other relatives, the local laws recognise the possibility of inheritance by the Autonomous Community within its territory, and even by a specific institution, in the form and under the terms laid down in the rules governing this matter.

5 What type of authority is competent:

5.1 in matters of succession?

Notaries, based on the degree of kinship, and courts are recognised as having jurisdiction to rule on succession and inheritance rights.

If the heir is of Spanish nationality or, if not, must receive his or her inheritance in Spain, a declaration of acceptance or renunciation of an inheritance and, in addition, a declaration of acceptance under benefit of inventory, may be made before a Spanish Consul or diplomatic official with consular functions. However, because of their extraterritorial function, the latter lack jurisdiction to hear non-contentious cases (*expedientes de jurisdicción voluntaria*) dealt with by notaries on Spanish territory (such as intestate declarations of heirs).

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

As a general rule, the acceptance and renunciation of an inheritance takes place before a notary, however there are specific cases in which such acceptance or renunciation takes place before a court. Express acceptance may also be declared through a private document. Nevertheless, for evidentiary purposes and if an award of property is involved, a public notarial document will be required, whereas renunciation may be declared before an authority intervening by virtue of the responsibility it must exercise in an issue relating to the succession. This is without prejudice to the possible intervention, as indicated above, of a Spanish Consul or diplomatic official with consular functions.

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

Notaries, in general, subject to the clarifications provided in the preceding section.

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

The legitimate portion cannot be renounced or accepted, but is received by way of bequest or grant of probate, except in the case of legal action to determine the payment of an amount or property to be charged to the inheritance.

In extrajudicial cases, notaries, in general, deal with all kinds of declarations regarding inheritance, subject to the clarifications provided in the previous sections.

It should be pointed out that, as far as Spanish law is concerned, the local and special laws of the Autonomous Communities contain specific provisions with regard to the acceptance and renunciation of an inheritance. In common law, with some exceptions such as the improvement of the inheritance above the legal share, the pre-legatee who is both heir and legatee, and some cases of multiple bequests, the general rule is that partial acceptance or renunciation is not possible.

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)

Succession is enacted before a notary where there is agreement between the individuals who have the right to inherit, or before a court if no such agreement exists. All these steps will be taken at the request of one of the interested parties.

The judicial procedure of the Inheritance Division consists of two distinct stages:

- Inventory and valuation of the assets of the estate.
- Division and award of the assets.

If requested by the parties, the court may also adopt intervention and administration measures with regard to the assets of the estate.

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

The status of heir or legatee is acquired on acceptance of the inheritance or legacy. The inheritance may be accepted outright, or under benefit of inventory. In turn, outright acceptance may be explicit (through a public or private document) or implicit (through acts that necessarily imply a willingness to accept, or that the person would not be entitled to carry out without the status of heir). Nevertheless, for evidentiary purposes and if an award of property is involved, a public notarial document is required.

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

In the case of outright acceptance or acceptance not under benefit of inventory, the heir will be responsible for all the liabilities of the succession, payment of which could involve not only the inherited property but also the heir's own property.

In the case of the inheritance being accepted under benefit of inventory, the heir is obliged to pay the debts and other liabilities of the succession only to the extent of the assets of the estate.

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

The registration of real estate requires the public deed of acceptance of the inheritance issued by a notary or, where appropriate, the relevant court decision that has been made, together with, as supplementary documents, the succession title (will, agreement), where accepted, and the declaration of heirs, in addition to the full death certificate and the certificate issued by the General Register of Wills.

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?

The appointment of an administrator (*administrador*) is not required under Spanish law, however such appointment may be agreed in the process of division of the inheritance, under certain circumstances.

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

If an executor (*albacea*) has been named in the will (under common law), he or she will administer the estate.

The testator may also appoint, in the will, an auditor (*contador partidor*) for the estate who will appraise the estate and divide the property.

In general, three persons – executor, auditor and administrator – may be appointed, all of whom have administrative powers that may be modified by the testator or by the judge and, in some cases, by the heirs themselves.

9.3 What powers does an administrator have?

The main functions of the administrator of the estate are:

- representation of the estate,
- periodic presentation of accounts,
- preservation of the property of the estate and any other management acts as may be deemed necessary.

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?

If the succession takes place before a notary, he or she will issue a public deed, which has full evidentiary effects.

If the succession takes place before a court, the disputed issues will be resolved by a court decision, which will constitute sufficient title with regard to the rights of those who are to inherit, and shall be formalised before a notary as provided by law.

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