BUCKLES
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French Legal Services

Administration of a French estate and the basics of French succession law

This guide aims to highlight the key points in the process of administering an estate in France. It is not a substitute for full legal advice. If you have inherited a property or other assets in France, or you are the executor of an estate including French assets and you require legal advice and assistance in this regard, please contact us for further information.

We have extensive experience of liaising with beneficiaries, executors and French Notaries in relation to the administration of French estates, and so can ensure the smooth running of the process.

Our work includes advising you on the contents of the various inheritance deeds and declarations which the Notary ("Notaire") must prepare and arranging for you or the beneficiaries, as applicable, to sign deeds locally in the UK.

We will also advise on the French inheritance law and tax implications for you or the beneficiaries, as appropriate.

Cross-border succession and EU succession rules

Currently the starting point is the concept of "domicile". Whilst a challenging concept to apply, it can be summarised as meaning a person's "permanent home".

Domicile is not the same under English and French law and the question of whether a person was domiciled in France at the date of death must be examined on a case by case basis. The French concept of domicile takes into account such criteria as:

- The person's place of principle establishment;
- Where they paid their taxes;
- Where they were registered on the electoral roll;
- Where they received their correspondence; and
- Where their family, professional and emotional ties were.

Currently, if a person dies whilst domiciled in the UK, the succession/inheritance law of their country of domicile will apply to the distribution of their estate. For example, if the person was domiciled in England, the inheritance law of England and Wales will determine who that person's heirs are and to what extent they are free to leave their assets to whom they choose. However, there is one important exception to this rule – where the deceased owned land and/or buildings abroad, the succession law of the country where the land/buildings are situated will determine who their heirs are.

Furthermore, currently if a British national dies whilst domiciled in France, French succession law will apply to the distribution of their worldwide estate – with the exception of any land/buildings they owned outside France (which will be governed by the succession law of the country in question).

In cross-border inheritance cases, it is therefore imperative to determine which country's law applies and which Court has jurisdiction to deal with any issues or disputes.

However, an important step to facilitate cross-border successions in the European Union was the adoption in 2012 of a new European Regulation aimed at simplifying the administration of estates. These new rules apply to the succession of people who die on or after 17 August 2015.

The aim of the Regulation is to ensure that a succession is administered under a single law and by one single authority, even if the deceased owned assets in more than one European Member State. In principle, the last habitual residence of the deceased will determine the law applicable to their succession, as well as the competent Court. However, citizens will be able to choose the law of their nationality instead, should they so wish.

This should mean that although in principle the worldwide estate of British nationals who die whilst habitually resident in France, will be governed by French succession law, the law of their nationality can apply to their estate instead if they have formally specified (in a French Will) that they wish this to be the case.

Likewise, the *worldwide* estates of British nationals who are habitually resident in the UK and who own assets in France will, in principle, be governed and administered by UK law (being the law of their habitual residence).

However, since the UK has not signed up to this Regulation, any succession procedures opened in the UK will continue to be dealt with by national rules only. In other words, it appears that a British national who is habitually resident in the UK and owned a property in France may not be able to take advantage of the Regulation so as to apply the law of their country of residence (e.g. the law of England & Wales, Scotland, Northern Ireland).

Even though the Regulation states the law of the person's habitual residence will apply to his worldwide estate, the UK Courts will, under private international law rules, refer back to France and French law as the applicable law governing the person's French property (real estate). It appears that France will have to accept this position.

But the position is nuanced – if that person has actually specified in a UK Will, that he wishes UK law, as the law of his nationality, to apply to his worldwide estate (rather than simply relying on the default position of the applicable law being the law of his habitual residence) then the Regulation does not allow the UK Courts to refer back to France and French law for the person's French property. Consequently France is unlikely to accept any attempt by the UK Courts to do so and there is likely to be a conflict of laws.

At the time of writing, we await further clarification as to what will happen in practice. Such clarification may not be forthcoming until after the EU Regulation becomes effective on 17 August 2015.

In the meantime, we recommend that you seek advice from us in relation to your particular situation and we will discuss the options currently available to you.

French succession law: the basics

In France, the "reserved heirs" (*héritiers réservataires*) are entitled to inherit a certain minimum proportion of the deceased's estate and they cannot be disinherited. This portion is known as the "reserved portion" (*la réserve*).

Consequently a person is only free to leave by Will the remaining portion of their estate (*la quotité disponsible*).

As explained above, currently if a person dies whilst domiciled in the UK, the French rules on reserved heirs will only apply to any land and/or buildings owned by that person in France. However, if a person is domiciled in France at the date of his death, the French rules will apply to his worldwide estate (and with exception – subject to the new EU succession rules referred to above – of any land and/or buildings they owned outside France).

If they so wish, the reserved heirs can waive their inheritance rights. They can also bring legal proceedings with the aim of enforcing their rights. Conversely, a person can leave the remaining portion of their estate to whoever they wish. The reserved and remaining portions of a person's estate are determined at the date of their death, taking into account any previous gifts.

A person's reserved heirs are, first and foremost, their children (whether conceived in or out of wedlock and whether adopted or not). Step-children, however, are not reserved heirs.

If a child of the deceased has pre-deceased him leaving children of his own, it is those children who share their parent's inheritance.

If the deceased does not leave any surviving descendants but leaves a surviving spouse, the surviving spouse becomes the reserved heir.

A person's parents or other ascendants are not reserved heirs. However, if the person dies without any surviving descendants, their parents are entitled to recover any assets which they gave him in his lifetime. This right is limited to one quarter of the value of the estate per parent.

The amount of the reserved portion of a child's estate depends, therefore, on his family situation. If the deceased leaves one child, that child is entitled to inherit a minimum of half of the person's estate. If the deceased leaves two children, they are entitled to inherit a minimum of two thirds of the estate, in equal shares, and if the deceased leaves three or more children they are entitled to inherit a minimum of three quarters of the estate, in equal shares.

If the deceased does not leave any descendants but leaves a surviving spouse, the surviving spouse is entitled to receive at least one quarter of the estate.

If a person has children but wants to leave a greater portion of his estate to his spouse than would otherwise be the case, he can make a Will or gift between spouses leaving his spouse the choice of inheriting one of the following:

- The remaining portion of his estate outright (i.e. half, third, or quarter, depending on the number of children);

- The equivalent of a life interest (*usufruit*) in the whole estate; or
- A *usufruit* in three quarters of his estate and the remaining quarter of the estate outright

However, if the person does not have any children or other descendants, he can make a Will (or gift between spouses) leaving his entire estate to his surviving spouse.

An adult reserved heir can, in advance, waive the right to enforce his entitlement to the reserved portion. Any such waive must be done by way of a deed in front of two Notaires in France and can relate to all or part of his reserved portion.

The aim of such a waiver is to give a person more freedom to divide his estate between his children – to favour, for example, those who are in most need.

The process of winding up a French estate

The administration of a French estate compromises four main stages.

In all cases, any French inheritance tax due must be paid within 6 months of the date of death (or within 12 months if the deceased died outside France):

The Notaire must draw up a list of the deceased's heirs/beneficiaries who stand to inherit the estate: to assist the Notaire in drawing up the list, the deceased's family must provide the Notaire with documents enabling him to identify the members of the family in question. These documents can be (for example):

- Passport
- Birth certificate
- Marriage/civil partnership certificate

The family must also hand over to the Notaire any Will made by the deceased and/or where relevant, any gift between spouses due to take effect upon death of the first spouse (known in French as a "donation entre époux").

The Notaire will also contact the French Central Wills Registry to check whether any French Will has been registered in respect of the deceased and, if so, where it is being stored.

Finally, the family must hand over identity documents for the deceased, such as his birth certificate, marriage/divorce/civil partnership certificate and death certificate.

The Notaire must then prepare a full statement of the deceased's assets and liabilities: the statement must list all assets (bank accounts, shares, furniture, land and buildings etc.) and their respective values, as well as all debts.

The deceased's family must therefore send to the Notaire all documents they can find (property title deeds, bank statements, savings books, bills etc.) that will assist him in valuing the assets and liabilities of the estate.

The family should also inform the Notaire of any transactions that they are aware of the deceased having entered into in the past, such as purchases, sales, exchanges, creation of companies, gifts etc.

The next step is for the Notaire to carry out the various French Land Registry and tax formalities in connection with the death: if the deceased owned land and/or buildings, the Notaire must draw up a deed for the transfer of ownership of the land and/or buildings in question (known as an *attestation immobilière)* to the deceased's heirs/beneficiaries and he must publish it at the Land Registry.

In all cases, the Notaire must also draft an inheritance deed (*Acte de Notoriété)* establishing the identity of the deceased's heirs and/or beneficiaries and the proportion of the estate they are entitled to inherit. Banks generally require such a deed before they will release the deceased's monies to the Notaire.

The Notaire must also complete an inheritance tax return (*Déclaration de Succession*) and where relevant, pay any inheritance tax due by the heirs and/or beneficiaries to the tax office within 6 months of the date of death (or 12 months if the deceased died abroad). In the event of late payment of inheritance tax, the heirs/beneficiaries must pay late payment interest of 0.4% per month plus, if the delay is particularly long, a 10% increase in the inheritance tax due.

In certain cases heirs/beneficiaries can apply to either postpone the payment of inheritance tax or pay it in instalments (although in both cases they will have to provide a guarantee (such as a registered charge over land or buildings) and must also pay late payment interest).

Note that unlike in England where the deceased's estate is liable for inheritance tax, in France it is the deceased's heirs and beneficiaries who are liable to pay inheritance tax, the amount of which depends on the relationship of the heir/beneficiary to the deceased and the value of the assets in question.

The heirs/beneficiaries must then decide whether to remain in joint ownership of the deceased's assets or whether to formally divide up the assets amongst themselves.

The final stage of the administration of a French estate is the legal division of the assets amongst the heirs/beneficiaries, if required. This process is known as a *partage:* if the heirs/beneficiaries decide not to formally divide up the assets amongst themselves, they will remain joint owners (*en indivision).*

However, if they decide that owning *en indivision* is too restrictive (because decisions must generally be taken unanimously) they can decide to divide up the assets amongst themselves.

Generally, the legal division of assets will be carried out with the agreement of all parties concerned and the Notaire will prepare the necessary deed of division ("*acte de partage*").

However, in the event of a serious disagreement (regarding, for example, what each person's "lot" is to consist of or what its value is to be) an application must be made to the French Court. This will inevitably lead to further delays and expense.

The timescale for winding up a French estate depends on the particularities of the estate in question, although six months is a general guide.

In addition to the above four steps, particular formalities may need to be carried out in certain cases. For example, if one of the heirs is a minor child or an incapable adult then it may be necessary to apply to the Court for directions or to obtain permission to take certain action (e.g. regarding the sale of a property). Once again, this will entail delays and additional expense.

If the minor child or incapable adult is a British national, an application must be made to the relevant Court in Great Britain (rather than to a French Court).

Other examples of formalities that may need to be carried out in certain cases are:

- The appointment of a receiver ("*administrateur judiciaire*") with regards to a business or farm which is to be passed on to an heir or beneficiary; and
- The instruction of a genealogist to find a particular heir or beneficiary.

Other factors which may have a bearing on the timescale for administering a French estate are how well the heirs/beneficiaries get on together, the amount and value of the assets or liabilities, the presence of foreign heirs/beneficiaries or assets situated abroad.

The cost of administering a French estate will be confirmed by the Notaire once he has obtained the relevant information about the estate.

In addition, if we are instructed we will charge a fee for liaising and collaborating with the Notaire to ensure the estate is administered as quickly as possible and for advising you throughout. Please contact us for further information.

As regards the fees incurred in France, there are three kinds:

- French inheritance tax due by each heir/beneficiary (from 5% to 60%, after application of the relevant tax free allowance depending on the person's relationship to the deceased and the value of the assets in question);
- Disbursements (e.g. the cost of certain obligatory documents and formalities); and
- Notaire's fees (calculated in accordance with a tariff set by the French State).

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