

# Cyprus Succession Law and Planning

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**C**yprus's succession law reflects the cosmopolitan nature of the island itself. While the wording of the law and many of its provisions are unmistakably English, Cyprus succession law also enshrines the concept of forced heirship, usually associated with civil law and Islamic countries, and recognises the rights of widows of polygamous marriages. This article provides an outline of the law and the forced heirship provisions and suggests planning techniques that can be used to avoid any restriction on testamentary freedom.

## The Key Legislation

Cyprus succession law is incorporated in a number of enactments, the most significant of which are the Wills and Succession Law (Cap 195), and the Administration of Estates Law (Cap 189). Both laws date back to the first half of the 20th century, when Cyprus was a British colony, which explains some of the rather old-fashioned language they contain.

These laws apply to anyone who dies domiciled in Cyprus. Domicile is a general legal concept, distinct from nationality or residence. Broadly speaking, a person's domicile is the place he or she thinks of as their permanent home.

The Wills and Succession Law deals with both Wills and Intestacy. The part of the law dealing with Wills is based on the English Wills Act of 1837, whereas the part dealing with intestacy is based on the Italian Civil Code and reflects continental law.

## The Concept of Forced Heirship

In contrast to its English counterpart, the Wills and Succession Law does not allow testators to dispose freely of their property by will. A substantial part of the deceased person's net estate (that is, the value after allowing for payment of debts and funeral expenses) must be reserved for close relatives (the deceased person's

spouse, children and descendants of children of the deceased who died in his or her lifetime) who are alive at the time of his or her death. This reserved amount is called the "statutory portion" and is distributed according to the rules set out in the Wills and Succession Law. The remaining amount of the net estate (the "disposable portion") may be disposed of by Will.

A Will that purports to dispose of more than the disposable portion of the testator's estate is not invalid but the disposition in the Will will be reduced and abated proportionally so as to be limited to the disposable portion. No abatement will take place if the testator leaves a surviving spouse but no children or descendants of children, and leaves more than the disposable portion, up to the value of his estate, to the surviving spouse.

Section 42 of the Wills and Succession Law provides that there is no statutory portion for anyone who was born, or whose father was born, in the United Kingdom or most Commonwealth countries. Such individuals are entitled to dispose of all their property by Will.

Other non-Cypriots are free to dispose only of moveable property without any statutory portion. Accordingly, these "forced heirship" provisions require careful consideration and appropriate action ahead of death to avoid any undesired results.

## How Forced Heirship Works

### Calculation of the statutory portion

The actual proportion of the net estate taken up by the statutory portion varies according to which relatives survive the deceased person.

- For example, if an individual dies leaving a living child or a descendant of a child, the statutory portion amounts to three quarters of the net value of the estate.
- If the individual is survived by a spouse or a parent, but not by any children or

their descendants, the statutory portion is half the value of the net estate.

- If the individual leaves no surviving spouse, parent, child or descendant of a child, the statutory portion is reduced to nil and all the estate may be disposed of by will.

The statutory portion is divided according to the rules set out in the Wills and Succession Law, which also apply in the absence of a valid will or to any part of the estate not otherwise disposed of.

#### **Categories of relatives entitled to the statutory portion**

These are divided into four classes, as follows:

1. The first class comprises the children of the deceased who are living at the date of his or her death, together with the surviving descendants of any of the deceased's children who died in his or her lifetime;
2. The second class comprises the parents of the deceased (or if the parents are dead, the nearest living ancestor) and the brothers and sisters (including half-brothers and half-sisters) of the deceased, together with the surviving descendants of brothers or sisters (including half-brothers and half-sisters) who died in the deceased's lifetime;
3. The third class comprises the nearest ancestors of the deceased living at the time of his or her death; and
4. The fourth class comprises the nearest other relatives of the deceased living at the time of his or her death, up to the sixth degree of kindred (more remote relatives are excluded).

The persons of one class exclude persons of a subsequent class. Accordingly, if the deceased person is survived by a child and a brother, the statutory portion of the estate goes exclusively to the child.

#### **Distribution of the statutory portion**

Within each class there are specific rules for the share taken by an individual class member:

- Living children of the deceased are all entitled to an equal share and descendants of a deceased child are entitled to that child's share *per stirpes*.
- Surviving parents, brothers and sisters (including half-brothers or half-sisters) of the deceased are all entitled to an equal share. Descendants of brothers and sisters who died in the lifetime of the deceased are entitled to the share of the brother or sister concerned, *per stirpes*.
- If there are ancestors of equal degree of kindred on both the mother's and the father's side of the family, the statutory portion and undisposed portion is divided into two. Each side of the family is entitled to its half share, and each individual takes an equal

percentage of his or her side's share.

- If there are two or more members of the fourth class, each receives an equal share.
- If the deceased person has no surviving spouse and no living relative within the sixth degree of kindred, the statutory portion and undisposed portion become the property of the government.

#### **The surviving spouse**

Where the deceased leaves a surviving spouse, a prior share must be set aside for him or her in arriving at the statutory portion. This share varies according to the number and closeness of relations entitled to the statutory portion.

- If the deceased leaves children (or descendants of children of the deceased who died in his or her lifetime), the statutory portion and undisposed portion is divided equally among the surviving spouse, the living children and the descendants of children who died in the lifetime of the deceased, *per stirpes*.
- If the deceased leaves no child (or descendant of a child), but at least one relative of the third degree of kindred (great grandparent, aunt, uncle, nephew or niece) or closer, the surviving spouse is entitled to half the statutory portion and undisposed portion.
- If the deceased leaves only relatives of the fourth degree of kindred (great great grandparent, great aunt, great uncle, first cousin, grand nephew or grand niece), the surviving spouse is entitled to three quarters of the statutory portion and undisposed portion.
- If the deceased leaves no relative within the fourth degree of kindred, the surviving spouse is entitled to the entire statutory portion and undisposed portion.

If the deceased left more than one lawful wife, the surviving spouse's share is divided equally among them.

#### **Retaining testamentary freedom**

As noted earlier, the forced heirship provisions do not affect the estate of anyone who was born, or whose father was born, in the United Kingdom or most Commonwealth countries.

For others, any undesired effects of the "forced heirship" provisions can be relatively easily circumvented. In the case of individuals coming to take up permanent residence in Cyprus (and ultimately acquiring a Cyprus domicile of choice), the simplest and most effective option is to establish a Cyprus International Trust under the International Trusts Law of 1992 prior to becoming resident in Cyprus. The International Trusts Law specifically provides that any transfer or disposition

made to a Cyprus International Trust will not be affected in any way by the inheritance law of the Republic of Cyprus or of any other country, and that the validity of such transfer shall not be challenged. This is reinforced by Section 1 of the 1976 Convention on the Recognition and Enforcement of Foreign Judgements in Civil and Commercial Matters, which has been ratified by Cyprus, and which provides that the Convention does not apply to decisions relating to the capacity of persons or questions of family law, including personal or financial rights and obligations between parents and children or between spouses and questions of succession.

The Cyprus International Trust also has powerful tax planning and asset protection benefits. It is exempt from taxation and transfers of assets into the trust cannot be set aside unless it is proved to the satisfaction of the court that the transfer was made with intent to defraud persons who were creditors of the settlor at the time the transfer was made. The burden of proof lies with the creditor and no action may be commenced after two years from the date of the transfer.

Costs of establishing and maintaining a Cyprus International Trust are modest and the formalities involved in setting up a trust are not onerous. International Trusts have other benefits – for example, the International Trusts Law provides that the income and gains of an international trust derived from sources outside Cyprus are exempt from all kinds of tax in Cyprus.

If a Cyprus International Trust is not an option (for example because the settlor is a permanent resident of Cyprus), a local trust should provide a way around the forced heirship provisions, though without the tax benefits of a Cyprus International Trust. Specialist legal advice, taking into account the individual's entire circumstances, is essential to determine the best way forward.

#### **In conclusion**

Cyprus offers an excellent quality of life to incoming residents and the island is becoming increasingly cosmopolitan. While Britain continues to be the single largest source of new residents, the Russian-speaking population is substantial and the island is truly cosmopolitan. In addition to its general low-tax regime, Cyprus has further attractions in the form of low taxation of pensions and absence of succession taxes in any form. While the forced heirship provisions of the succession law may be a trap for the unwary, proper planning can avert any undesired consequences. What is more, the succession planning structure of choice, the Cyprus international trust, brings with it significant side-benefits in terms of asset protection and tax planning opportunities.