

Private Client

Revision of Swiss Inheritance Law Allowing More Flexibility in Estate Planning

Introduction

On 1 January 2023, the first part of the revised Swiss inheritance law will come into force with the following key far-reaching changes for all individuals:

1. Reduction of reserved portion for descendants and abolishment of reserved portion for parents;
2. Increased entitlement for spouse with usufruct;
3. Abolishment of forced heirship in pending divorce proceedings;
4. Prohibition of gifts after conclusion of inheritance contract; and
5. Further clarifications on disputed legal questions.

This Update provides an overview of these changes.

Key Changes

Reduction of Reserved Portion for Descendants and Abolishment of Reserved Portion for Parents

The most important modification of the revised law concerns the forced heirship rules. Forced heirship rules of disposition and succession stipulate that upon death of a person, a part of his/her testamentary estate must pass to his/her forced heirs, such as his/her descendants and spouse ("**reserved portion**"). The new law reduces the reserved portion of descendants from $\frac{3}{4}$ to $\frac{1}{2}$ of their legal share of the testamentary estate, and abolishes the reserved portions for parents (previously $\frac{1}{2}$ of their legal share). The reserved portion for the surviving spouse/registered partner, however, will remain unchanged at $\frac{1}{2}$ of their legal share.

In other words, if a person is survived by a spouse and descendants, an increased $\frac{1}{2}$ of his/her estate (and no longer $\frac{3}{8}$ only) may be freely disposed of. The same disposable quota applies if a person is survived by descendants only (previously only $\frac{1}{4}$). If, on the other hand, a person is survived by a spouse/registered partner and the parents, $\frac{5}{8}$ of the estate may be freely disposed of. Hence, the disposable quota amounts to at least $\frac{1}{2}$ of the estate in any case and the testator is free to bequeath $\frac{1}{2}$ of the estate to any chosen heir or legatee at his/her own discretion.



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The revised provisions will not only apply to all successions after 1 January 2023 but also to existing last wills and inheritance contracts. Therefore, a review of existing succession and inheritance documents is recommended in order to ensure compliance with the revised law.

Increased Entitlement for Spouse with Usufruct

Under the current law, spouses with common descendants may bequeath a maximum of $\frac{1}{4}$ of the estate to the surviving spouse as an heir and the rest of $\frac{3}{4}$ of the estate (which goes to the common descendants) to the surviving spouse as a usufruct (as a beneficiary). As a result of the modifications of the forced heirship rules, it will be possible to allocate $\frac{1}{2}$ of the estate to the spouse as an heir and the other $\frac{1}{2}$ as usufruct (as a beneficiary).

Abolishment of Forced Heirship in Pending Divorce Proceedings

To date, a spouse/registered partner loses his/her inheritance and forced heirship entitlements only upon a legally binding divorce or dissolution decision. Under the new law, if a spouse/registered partner passes away while a divorce or dissolution proceeding is pending, the surviving spouse/registered partner loses his or her forced heirship if (i) the divorce proceeding was initiated or continued by mutual request; or (ii) the spouses have been living separately for at least two years.

However, in the absence of a last will, the surviving spouse/registered partner keeps his/her legal inheritance entitlement until a legally binding divorce or dissolution decision has been issued. Consequently, if it is intended that the surviving spouse/registered partner should not receive an inheritance, a last will must be made.

In addition, the new law provides that the spouse or registered partner may no longer lodge claims under any last will or inheritance contract upon the initiation of divorce or dissolution proceedings unless otherwise provided.

Prohibition of Gifts after Conclusion of Inheritance Contract

The revised law provides that gifts that are not provided for in an inheritance contract are invalid. This means that any testamentary dispositions or *inter vivos* gifts – except for occasional gifts – made by the testator, may be challenged if they (i) are incompatible with the obligations under the inheritance contract, and (ii) have not been expressly allowed in the inheritance contract. It is therefore crucial to state in the inheritance contract whether and to what extent the parties may make gifts. Therefore, it is advisable to review existing inheritance contracts and to amend them, if necessary.

Further Clarifications on Disputed Legal Questions

The revised inheritance law provides several clarifications about academically disputed legal questions. This primarily concerns the calculation of the forced heirship in the case of an over-half allocation of the surpluses to the surviving spouse (by matrimonial contract), the order in which lifetime gifts are to be

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abated, and payments out of the pillar 3a (bank or insurance solutions) which do not fall into the testator's estate.

Recommendation

The modifications of the revised inheritance law will allow testators more flexibility in their estate planning under Swiss law. In order to benefit from this new flexibility, we recommend that you have your last wills and inheritance contracts reviewed.

If you have any queries on the above, please do not hesitate to reach out to the team members from our Private Client Practice who are set out below.

Our Private Client Practice

Our team is based in Singapore, one of Asia's leading wealth management hubs, with a stable government and robust legal and regulatory infrastructure. The country's tax and trust laws provide for confidentiality, flexibility and protection of assets of high-net-worth (HNW) individuals and families. With a deep understanding of these local laws, coupled with an international perspective, we have built a strong reputation in helping our private clients make critical decisions to implement their wealth and succession planning objectives.

Supported by the Rajah & Tann Asia network, our team of legal experts adopt a comprehensive approach to help you manage, protect and grow your wealth and investments in the region, and we will remain close to assist you and your family through the various phases of your life from wealth accumulation to wealth maintenance and finally to wealth distribution. Whether your goal is tax efficiency, philanthropy, asset protection or the smooth transfer of wealth to the next generation, we are here to guide you through the process to realise these goals.

Find out more about our Private Client practice [here](#).

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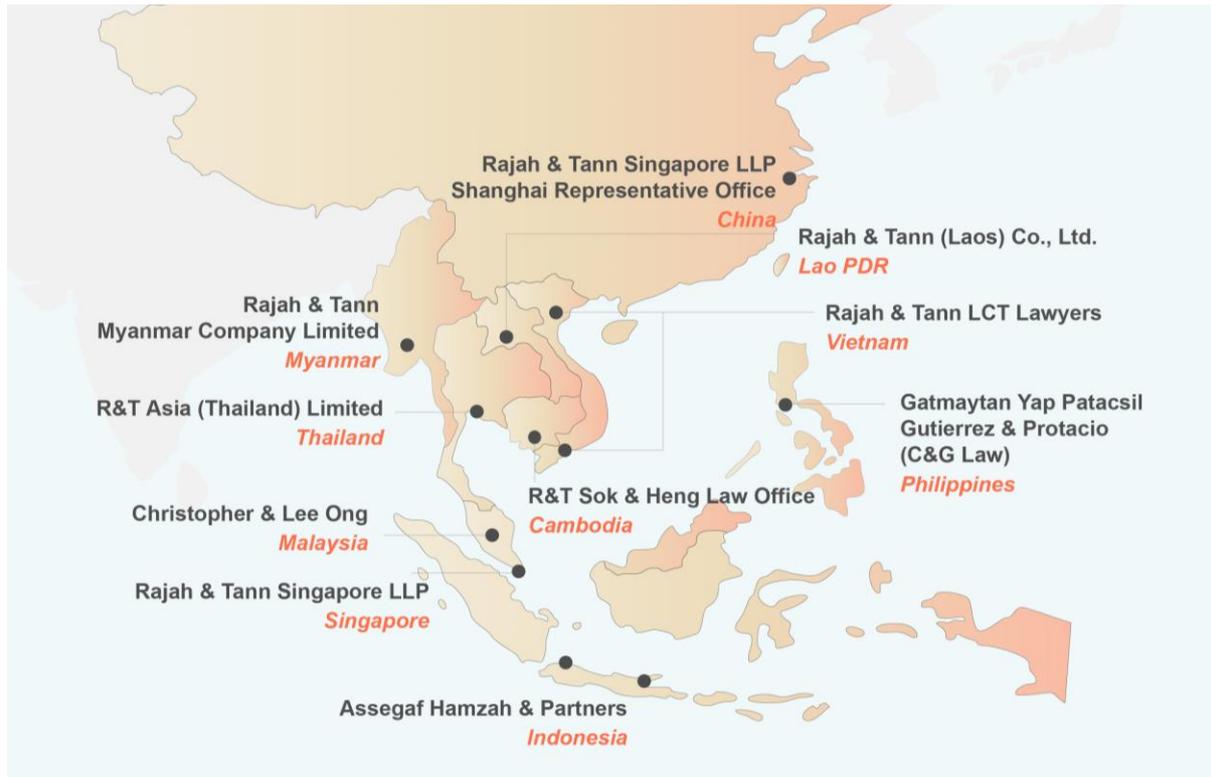
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